

United States District Court
Southern District of California

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 10-CR-4246 JM
) Jury Trial/Day 6
BASAALY SAEED MOALIN,) Tuesday, February 5, 2013
MOHAMAD MOHAMAD MOHAMUD)
ISSA DOREH,) Volume 6
AHMED NASIR TAALIL MOHAMUD,)
)
Defendants.)

Before the Honorable Jeffrey T. Miller
United States District Judge

Official Interpreters: Ayderus Ali, CCI
Fanik Jama, CCI
Official Court Reporter: Debra M. Henson, CSR, RPR
U.S. Courthouse
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San Diego, CA 92101
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Record produced by stenographic reporter

1 Appearances

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1 San Diego, California - Tuesday, February 5, 2013

2 (Defendant A. Mohamud is being assisted by a Somali
3 interpreter.)

4 (Unreported bench conference between the Court and
5 counsel out of the hearing of the jury.)

6 (There was a break in the proceedings.)

7 THE COURT: Good morning, ladies and gentlemen.
8 Good to see everyone. All jurors are present, counsel and
9 the parties are present, and we are ready to continue with
10 the direct examination of Agent O'Very.

11 MR. COLE: Thank you, your Honor.

12 Colby O'Very
13 called by the government, was previously sworn and continued
14 to testify as follows:

15 Direct Examination, cont'd

16 BY MR. COLE: Q. Now, Agent O'Very, if we could
17 just get back to where we were yesterday -- oh, I'm sorry.
18 Now, just to get us back where we left off, Agent O'Very, we
19 had listened to a call on December 21 with Sheikalow. That
20 was Government's Exhibit 120; is that right?

21 A. Yes, sir.

22 Q. And in that call there was discussion of money needed for
23 rations in Bay and Bakool?

24 MR. DRATEL: Objection, your Honor.

25 THE WITNESS: Yes, sir.

1 MR. DRATEL: Asked and answered.

2 THE COURT: It's just preliminary just to set where
3 we were yesterday.

4 BY MR. COLE: Q. Now, let's go then to
5 Government's Exhibit 123 -- excuse me -- 122. And what's the
6 date of this call, Agent O'Very?

7 A. December 22, 2007.

8 Q. Is this with defendant Basaaly Moalin and Ahmed Nasir
9 Taalil Mohamud?

10 A. Yes, sir.

11 Q. And there was an initial portion of this call in which
12 they greet each other?

13 A. Yes, sir.

14 MR. COLE: Let's play clip 1, Ms. Alejandre.

15 (The audio recording was played.)

16 BY MR. COLE: Q. And later in that conversation,
17 Agent O'Very, was there discussion of young men firing the
18 bullets?

19 A. Yes, sir.

20 MR. COLE: Let's play clip 2 --

21 (The audio recording was played.)

22 BY MR. COLE: Q. Now, Agent O'Very, there was
23 reference to Bur Hakaba at -- on page 2 of that Government's
24 Exhibit 122; is that right?

25 A. Yes, sir.

1 Q. And if we could look at Government's Exhibit 2.

2 MR. COLE: If we could zoom in on --

3 MR. DRATEL: Objection, leading.

4 THE COURT: The objection is overruled.

5 BY MR. COLE: Q. Well, Agent O'Very, could you --

6 MR. COLE: If we could zoom in on the bottom
7 portion of the map, the bottom half of the map.

8 BY MR. COLE: Q. Can you indicate to the jury
9 where Bur Hakaba is located on the map. Is that in the Bay
10 region?

11 A. Yes, that is correct.

12 Q. If we could turn to Government's Exhibit 123.

13 MR. DRATEL: Your Honor, 106 objection.

14 THE COURT: The Court and counsel have already had
15 a discussion about the protocol of 106 additions, if any;
16 we'll deal with that later.

17 MR. DRATEL: Thank you, your Honor. Just making it
18 for the record.

19 BY MR. COLE: Q. Now, that last phone call was on
20 December 22. Let's go to December 28, 2007, Government's
21 Exhibit 123. Agent O'Very, was this call between Basaaly
22 Moalin and Issa Doreh?

23 A. Yes, sir.

24 Q. And, again, there was an initial clip where there's a
25 greeting?

1 A. That's correct.

2 MR. COLE: Let's play that first clip.

3 (The audio recording was played.)

4 BY MR. COLE: Q. And later in the conversation in
5 Government's Exhibit 123, was there discussion that the men
6 requested that we throw something to them for this month?

7 A. Yes.

8 MR. COLE: If we could play that next clip.

9 (The audio recording was played.)

10 BY MR. COLE: Q. Let's turn to Government's
11 Exhibit 124. Now, after the call we just heard, Agent
12 O'Very, was there a call several hours later that same day
13 with defendant Basaaly Moalin and defendant Mohamad Mohamad
14 Mohamud?

15 A. Yes, sir.

16 Q. And in that call was there a discussion that the men had
17 been crying out to me over the phone?

18 A. Yes, sir.

19 MR. COLE: Let's play this clip.

20 (The audio recording was played.)

21 MS. MORENO: Respectfully, your Honor, I'd lodge a
22 106 objection to this conversation.

23 THE COURT: I didn't hear you, counsel.

24 MS. MORENO: There would be a 106 objection to this
25 conversation.

1 THE COURT: You don't need to make any objections
2 unless you feel you need to, all right? I'm going to --

3 MS. MORENO: For the record.

4 THE COURT: Well, there's -- okay. I'll be going
5 over the 106 submissions later on and we'll have a discussion
6 on the record outside the presence of the jury. If you feel
7 you must make an objection, you certainly may; I think it's
8 unnecessary, but you'll preserve all of your 106 issues
9 without limitation from this point forward.

10 MS. MORENO: Thank you, your Honor.

11 THE COURT: There will be an opportunity to address
12 all of those, okay?

13 MS. MORENO: Thank you.

14 THE COURT: Thank you. Would you repeat the last
15 couple of questions, Mr. Cole?

16 MR. COLE: I think I -- I don't think I even had
17 one pending. I think that call just finished playing and
18 there was the objection.

19 THE COURT: Okay. You're proceeding to 124 then?

20 MR. COLE: Actually to 125 now.

21 THE COURT: Okay. Thank you.

22 BY MR. COLE: Q. So if you could turn to 125,
23 Agent O'Very. We're still on the date of December 28, 2007?

24 A. Yes, sir.

25 Q. And was there just an initial greeting or an initial

1 portion on this transcript where there's a reference to the
2 name of the person being addressed?

3 A. Yes, sir.

4 MR. COLE: And if we could just play that clip.

5 (The audio recording was played.)

6 BY MR. COLE: Q. And was there later in the
7 conversation, after they began speaking, a conversation about
8 someone pulling out of a region?

9 A. Yes, sir.

10 MR. COLE: Play the next clip.

11 (The audio recording was played.)

12 BY MR. COLE: Q. Now, Agent O'Very, if you could
13 turn to Government's Exhibit 126. We're now going to
14 December 29, 2007. Was there a conversation between
15 defendant Basaaly Moalin and an individual identified as
16 Najib?

17 A. Yes, sir.

18 Q. And in that would be discussed Abdi Qeybdiid having been
19 targeted with a bomb?

20 A. That is correct.

21 MR. COLE: If we could play that.

22 (The audio recording was played.)

23 BY MR. COLE: Q. Now, Agent O'Very, turning to
24 Government's Exhibit 127, the conversation on the same day,
25 December 29, 2007, did Basaaly Moalin and defendant Ahmed

1 Nasir Taalil Mohamud again -- or discuss Abdi Qeybdiid?

2 A. Yes, sir.

3 MR. COLE: If we could play the next call.

4 (The audio recording was played.)

5 BY MR. COLE: Q. If we could turn to Government's
6 Exhibit 128. Was this, Agent O'Very, a call on the next day
7 December 30, 2007?

8 A. Yes, sir.

9 Q. And in this conversation does Basaaly Moalin make
10 reference to Aden Ayrow?

11 A. Yes, sir, that's correct.

12 MR. COLE: Could you play this call.

13 (The audio recording was played.)

14 MR. COLE: One moment.

15 BY MR. COLE: Q. Now, on January 1st, 2008, was
16 there a phone call between defendant Basaaly Moalin and
17 someone identified as Hassan?

18 A. Yes, sir.

19 Q. And in that call was there discussion of the young ones
20 on -- if you'll look at 11:11 on page 2.

21 A. Yes, sir.

22 MR. COLE: If you could play this.

23 (The audio recording was played.)

24 MR. DRATEL: If I could have my 801 (d) (2) (E)

25 objection on this call. I'll put it on the record later, but

1 I referred to it --

2 MR. DURKIN: I have one for a separate reason as
3 well, Judge.

4 THE COURT: You want to make clear what you're --

5 MR. DURKIN: It's an 801 (d) (2) (E).

6 THE COURT: Okay. But the call number, the exhibit
7 number.

8 MR. DRATEL: It's 129, your Honor.

9 THE COURT: Thank you.

10 (The audio recording was played.)

11 BY MR. COLE: Q. Now, later that same day on
12 January 1st -- or looking at -- I should say looking at
13 Government's Exhibit 130, was there a phone call with
14 Sheikalow and defendant Basaaly Moalin?

15 A. Yes, sir.

16 Q. And Sheikalow, that was the same person in the very first
17 call -- the same name in the very first call we played,
18 Government's Exhibit 120?

19 A. Yes, sir.

20 Q. And if we could -- in that conversation was there
21 discussion about an amount being sent to Sheikalow? On the
22 bottom of page 1.

23 A. Yes, sir.

24 MR. COLE: If we could play that.

25 (The audio recording was played.)

1 BY MR. COLE: Q. Agent O'Very, what was the name
2 reference; was it Yusuf Mohamed Ali as the reference in that
3 part we listened to?

4 A. That is correct.

5 Q. And after they discussed an amount sent in the name of
6 Yusuf Mohamed Ali, was there later discussion in this
7 conversation about giving the non-Muslims a holiday to
8 remember?

9 A. Yes, sir.

10 (The audio recording was played.)

11 BY MR. COLE: Q. And if we could look down, in the
12 conversation, Agent O'Very, do they continue to discuss the
13 reliberation and Shabaab needing each other?

14 A. Yes, sir.

15 MR. COLE: Could you play the next clip.

16 (The audio recording was played.)

17 MR. COLE: And if we could play the third clip.

18 (The audio recording was played.)

19 BY MR. COLE: Q. And, Agent O'Very, at the
20 conclusion of this transcript in Government's Exhibit 130,
21 what does Basaaly tell Sheikalow to convey to the youth?

22 A. Says convey my greetings to the youth.

23 MR. COLE: And if we could play that.

24 (The audio recording was played.)

25 BY MR. COLE: Q. Now, Agent O'Very, turning to

1 Government's Exhibit 131, we just listened to a call with
2 Sheikalow. Was there another call with Sheikalow on
3 January 3rd of 2008?

4 A. Yes, sir.

5 Q. And was there discussion in the first portion of this
6 transcript of fighting taking place in Adaado? Look at page
7 2.

8 MR. DRATEL: Objection, your Honor; leading.

9 THE COURT: The objection is overruled.

10 THE WITNESS: Yes, sir.

11 MR. COLE: If we could play just the first portion.

12 (The audio recording was played.)

13 BY MR. COLE: Q. Now, Agent O'Very, after this
14 discussion about the fighting in Adaado and reference to
15 Abdullahi Yusuf, did Basaaly Moalin go on to discuss his
16 house with Sheikalow?

17 A. Yes, sir.

18 MR. COLE: If we could play the next portion.

19 (The audio recording was played.)

20 BY MR. COLE: Q. Now, Agent O'Very, after this
21 discussion about directions to a house, does Basaaly Moalin
22 go on to talk about hiding stuff there?

23 A. Yes, sir.

24 MR. COLE: Can you play the next one.

25 (The audio recording was played.)

1 BY MR. COLE: Q. Now, Agent O'Very, after this
2 discussion of hiding things in the ground at this house, did
3 they go on later in the call to talk about, again, it being
4 easily identifiable from far away?

5 A. Yes, sir.

6 MR. COLE: Can you play that.

7 (The audio recording was played.)

8 BY MR. COLE: Q. Now, Agent O'Very, if we can go
9 back, what again was the date and time of the call we just
10 listened to?

11 A. That was January 3, 2008 at 9:54 UTC.

12 Q. And if we could look at the next exhibit, 132, was --
13 does this transcript -- was this the same date?

14 A. Yes, sir.

15 Q. And at 10:20 UTC?

16 A. Yes, sir.

17 Q. And so less than an hour -- within the hour of the
18 previous call?

19 A. That's correct.

20 MR. COLE: If we could play this call/clip.

21 (The audio recording was played.)

22 BY MR. COLE: Q. Now, Agent O'Very, after Basaaly
23 said I was talking to the man who was in charge of the youth,
24 he referred to Abdullahi Yusuf's men; is that right?

25 A. Yes, sir.

1 Q. Now, looking back to Government's Exhibit 131, the call
2 with Sheikalow, on page 3 was there in fact a discussion of
3 men loyal to Abdullahi Yusuf?

4 A. Yes, sir.

5 Q. And if we could look at Government's Exhibit 133.
6 Turning to January 8 of 2008, Agent O'Very, was there a call
7 between defendant Moalin and Ahmed Nasir Taalil Mohamud,
8 regarding eight tax collectors being killed?

9 A. Yes, sir.

10 MR. COLE: If we could play that.

11 (The audio recording was played.)

12 BY MR. COLE: Q. And, Agent O'Very, was there a
13 later portion on that transcript where Basaaly Moalin refers
14 to the other party on the call?

15 A. Yes, sir.

16 MR. COLE: Would you play that last.

17 (The audio recording was played.)

18 BY MR. COLE: Q. Now, turning to Government's
19 Exhibit 134, what is the date on this transcript, Agent
20 O'Very?

21 A. January 15, 2008.

22 Q. And the transcript identifies the speakers as who?

23 A. Basaaly and Abdulkadir.

24 Q. And was there -- was this conversation -- did this
25 conversation involve a discussion of people being shot coming

1 out of mosques?

2 A. Yes, sir.

3 MR. COLE: If we could play this.

4 (The audio recording was played.)

5 BY MR. COLE: Q. Now --

6 MR. DRATEL: Your Honor, I have an 801 (d) (2) (E)
7 objection to that.

8 MR. COLE: If we can go --

9 THE COURT: I'll make no ruling.

10 BY MR. COLE: Q. If we can go to Government's
11 Exhibit 135, what is the date on this transcript, Agent
12 O'Very?

13 A. January 18, 2008.

14 Q. And on this transcript is there discussion of fundraisers
15 taking place for those who behead the enemy?

16 A. Yes, sir.

17 MR. COLE: If you could play this.

18 (The audio recording was played.)

19 BY MR. COLE: Q. If we could --

20 MR. DRATEL: Your Honor, that one as well, 801
21 (d) (2) (E) .

22 BY MR. COLE: Q. If we could turn to Government's
23 136. Agent O'Very, what is the date of this call on the
24 transcript?

25 A. January 20, 2008.

1 Q. And the speakers on this page are identified as who?

2 A. Basaaly and Sheikalow.

3 Q. And the last conversation that we heard with Sheikalow
4 was on January 3, Government's Exhibit 131; is that right?

5 A. Yes, sir.

6 MR. COLE: And if we could just play the first
7 clip.

8 (The audio recording was played.)

9 BY MR. COLE: Q. Now, Agent O'Very, after greeting
10 each other, was there a point later in this call where
11 Sheikalow tells Basaaly that we, the Shabaab, have a
12 political section, a military section, and a missionary
13 section?

14 A. Yes, sir.

15 MR. COLE: Let's play that.

16 (The audio recording was played.)

17 BY MR. COLE: Q. Agent O'Very, after Sheikalow
18 said we, the Shabaab, have a political section, a military
19 section, and a missionary section, was there a later
20 discussion about the jihad we are waging?

21 A. Yes, sir.

22 MR. COLE: If we could continue playing.

23 (The audio recording was played.)

24 BY MR. COLE: Q. Now, after Sheikalow discussed
25 men blowing themselves up and killing 300 to 400 Ethiopians,

1 did he go on to discuss the landmine attack against Abdi
2 Qeybdiid?

3 A. Yes, sir.

4 (The audio recording was played.)

5 BY MR. COLE: Q. Now, Agent O'Very, after
6 describing we planted a landmine for Abdi Qeybdiid, later in
7 the call did Sheikalow ask or instruct Basaaly what to tell
8 Sheik Mohamad?

9 A. Yes, sir.

10 MR. COLE: And if we could play that next part.

11 (The audio recording was played.)

12 BY MR. COLE: Q. Now, Agent O'Very, what's the
13 date on the next transcripts, Government's Exhibit 137?

14 A. January 21, 2008.

15 Q. And what time is listed on that transcript?

16 A. That's 0058 or 12:58 a.m.

17 MR. DRATEL: Your Honor, I have an 801 (d) (2) (E)
18 objection.

19 BY MR. COLE: Q. And now, Agent O'Very, the last
20 call we listened to with Sheikalow, we just listened to, was
21 January 20; is that right?

22 A. Yes, sir.

23 Q. And the time on this call is Universal Time?

24 A. Yes, sir.

25 Q. And so in San Diego at the time of this call, as listed

1 on the transcript, would it still have been the 20th of
2 January?

3 A. Yes, sir.

4 Q. So the same date of the previous phone call?

5 A. Yes, sir.

6 MR. COLE: If we could play Government's Exhibit
7 137.

8 (The audio recording was played.)

9 BY MR. COLE: Q. Agent O'Very, after that call
10 concluded with Hassan telling Basaaly it's not nice to spell
11 out everything like you're spelling out, was there a call on
12 February 2, as listed on the transcript, between Basaaly and
13 Sheikalow?

14 A. Yes, sir.

15 MR. COLE: And if we could play the first portion.

16 (The audio recording was played.)

17 BY MR. COLE: Q. Now, Agent O'Very, later in this
18 conversation after having Sheikalow inquiring whether Basaaly
19 had seen the sheik, did they go on to discuss an ambush?

20 A. Yes, sir.

21 MR. COLE: If you could play that next portion.

22 (The audio recording was played.)

23 BY MR. COLE: Q. Now, Agent O'Very, that call was
24 on February 2 of 2008. Was there another call the next day
25 on -- well, let's look at Government's Exhibit 139. What is

1 the date on that phone call?

2 A. February 3, 2008.

3 Q. And the speakers?

4 A. This is Basaaly and Sheikalow.

5 Q. And in this call does Sheikalow again ask whether Basaaly
6 had reached someone?

7 A. Yes, sir.

8 Q. And was that Sheik Mohamad?

9 A. Yes, sir.

10 MR. COLE: If we could play that.

11 (The audio recording was played.)

12 BY MR. COLE: Q. So, Agent O'Very, at page 2 of
13 that transcript, at 11:10 and 11:12, did it say we need money
14 man, provide some, please?

15 A. Yes, sir.

16 Q. And at 11:22 you were running late with the stuff, send
17 some and something will happen?

18 A. Yes, sir.

19 Q. And what was the response?

20 A. Yes, we will do our best.

21 Q. And if we could now turn to Government's Exhibit 140.
22 What's the date on this transcript, Agent O'Very?

23 A. February 9, 2008.

24 Q. And who are -- on the transcript who is identified as the
25 speakers?

1 A. Basaaly and Issa.

2 Q. And does this conversation involve two that were sent to
3 Dhunkaal?

4 A. Yes, sir.

5 Q. And for the record, D-h-u-n-k-a-a-l is the spelling of
6 Dhunkaal?

7 A. Yes, sir.

8 MR. COLE: And if we could play this.

9 (The audio recording was played.)

10 BY MR. COLE: Q. Now, looking -- after this
11 discussion of Dhunkaal and the two that were sent, let's go
12 to Government's Exhibit 141.

13 THE COURT: Before we get to 141, are you at
14 convenient breaking time, Mr. Cole?

15 MR. COLE: Sure.

16 THE COURT: Ladies and gentlemen, we'll take our
17 midmorning recess at this time. It may be a few minutes
18 longer than usual, let's say 20 minutes, and we'll be with
19 you at that point or very shortly thereafter. Remember the
20 admonition not to discuss the case or make any decisions at
21 this time. Thank you.

22 (The jury left the courtroom.)

23 THE COURT: All right. We are outside the presence
24 of the jury. Just a couple points we need to cover at this
25 time -- and we may not be able to cover all that needs to be

1 discussed outside the presence of the jury.

2 The record should reflect that just a few minutes
3 before the jury came in this morning, I asked to see counsel,
4 and the court reporter was not present. It was my intention
5 just to at that point bring counsel up to date on their 106,
6 their Rule 106 submissions.

7 As was clear from yesterday's proceedings, I had
8 asked counsel to submit their Rule 106 proceedings in some
9 kind of an acceptable format so that I could see what their
10 submissions were vis-a-vis the excerpted calls that the
11 government was going to present and has been presenting. And
12 also it was my intention to compliment Ms. Roberts and Mr.
13 Durkin in the manner in which they had submitted their 106
14 submission; that was late yesterday afternoon. I did have an
15 opportunity to review those submissions and finish just
16 before the nine o'clock start time today.

17 It was also my intention just to advise counsel
18 that for whatever reason, including some logistical problems
19 they may have had that put a tremendous burden on me to
20 review all of these materials, these 106 submissions, and to
21 have rulings ready for the playing of these excerpted calls.
22 It was my understanding that we'd reached some kind of
23 agreement yesterday that I would have the Rule 106 decisions
24 ready at some point and that at a later point in time, if
25 calls needed to be replayed with 106 material inserted, that

1 that would be the best way to do it, a seamless way to do it.
2 It was basically -- so it was just a meeting to let counsel
3 know where I was on a bit of a daunting task here. I've got
4 about 3 inches of materials I'm trying to go through right
5 now.

6 At the end of that part of the discussion, Mr.
7 Dratel indicated that it would be his request to have Rule
8 106 material come in right now -- not to wait but to have
9 this witness confronted on cross-examination with Rule 106
10 proffers.

11 I explained to Mr. Dratel that would really burden
12 the proceedings, break down the proceedings, and that is not
13 the way in my view it should be done. I indicated I would
14 make rulings as soon as possible and provide the defense an
15 opportunity to replay any tapes or conversations they wished
16 to replay.

17 Mr. Dratel, you then objected and stated that
18 the -- essentially the Rule 106 material should be dealt with
19 on an ad hoc basis, cross-examining the witness. In my view,
20 this would be impractical, and I would not have an
21 opportunity in advance to rule on 106 issues. I believe the
22 Court has inherent power to order the presentation of
23 evidence for purposes of fairness and efficiency and to
24 eliminate undue delay. In my view, this would severely
25 hamper the government's efficient presentation of this

1 material, and this would just be an unacceptable breakdown in
2 the continuity of the -- of the trial.

3 So that's pretty much what occurred. I wanted to
4 give counsel at this point an opportunity to elaborate or
5 correct any characterization of the earlier concern. Mr.
6 Dratel?

7 MR. DRATEL: Thank you, your Honor. My proposal,
8 if it can be done obviously at this point -- I understand the
9 Court's inherent authority, and we acknowledge that
10 obviously.

11 THE COURT: As well as the understanding we reached
12 last night, I hope, as to how this would be done.

13 MR. DRATEL: Well, your Honor, we did submit ours
14 early this morning. We have about -- I guess about ten
15 calls, some of which were reached this morning, some of which
16 we won't reach till this afternoon, if we get there at all
17 this afternoon. I don't even know how far we're going to get
18 in --

19 THE COURT: From the pace of this -- pardon the
20 interruption, but from the pace of this, it may well be that
21 what you have anticipated, cross-examination of this witness
22 while this witness is on the stand before he's excused may
23 well proceed. If I have an opportunity to go through a
24 number of these over the noon hour, I'll do that and provide
25 rulings. And it may be that this afternoon or at the end of

1 these tapes being played the first time around, you'll have
2 an opportunity before the witness leaves the stand.

3 MR. DRATEL: And, your Honor -- yeah. And also
4 just even if -- I mean just trying to figure out where we are
5 in the process and how long it's going to take, my proposal
6 was also that if this witness ends in the midafternoon, that
7 we break until tomorrow morning for cross-examination to give
8 the Court an opportunity to look at the 106 because it's our
9 position that the 106s need to come in as quickly as possible
10 for purposes of correcting misleading -- I mean there was one
11 that they broke off in midsentence.

12 THE COURT: Well, let me say this, Mr. Dratel; this
13 may -- this may provide some comfort to you. After having
14 gone through the 106 submissions submitted by Mr. Dratel,
15 there are in fact some places where 106 material will come
16 in. And I think that the best way to do that is in the most
17 efficient way to do that, and -- I have your objection in
18 mind; I think I understand your concern. But at this
19 particular point in time, to allow 106 -- proffered 106
20 material to come in in my view is going to break down the
21 proceedings for the reasons I've indicated. I will say that
22 even though there are some 106 submissions proffered by
23 defendant Nasir that will be permitted, some won't be
24 permitted as well, so --

25 MR. DRATEL: But, your Honor, I just ask the Court

1 to I guess keep it all in mind about where we are in the
2 proceedings in terms of where the Court is with respect to
3 cross-examination; that's all I'm asking the Court to do.

4 THE COURT: Okay.

5 MR. DURKIN: Excuse me, Judge. Can I --

6 THE COURT: On this point, Mr. Dratel -- excuse me,
7 Mr. Durkin?

8 MR. DURKIN: Your Honor --

9 MR. DRATEL: Yeah, actually could we do that off
10 the record as well? I just want to put the 801 (d) (2) (E)
11 objections on the record if I may, your Honor.

12 THE COURT: Well, the 801 (d) (2) (E) objections are
13 on the record. I've made --

14 MR. DRATEL: Well, I mean just to explain them so
15 that it's clear because I made an explanation at side bar
16 very quick.

17 THE COURT: Yes, it was at that point that I think
18 that I ended that sidebar because we were starting to get
19 into a few substantive areas, and I was just merely at that
20 point trying to advise counsel where I was in the 106
21 submissions and thanking Mr. Durkin -- well, probably not Mr.
22 Durkin, Ms. Roberts -- I would thank you for that; I don't
23 want Mr. Durkin to get carried away.

24 MS. ROBERTS: Thank you, Judge.

25 MR. DURKIN: I give her all the credit.

1 THE COURT: Okay.

2 MR. DRATEL: Your Honor, all I just meant to say
3 that I our objection is based on the fact that there has not
4 been a sufficient showing that any of those other parties on
5 the -- and on the conversations that we have identified --

6 THE COURT: I've got 129, 134, 135, and 137.

7 MR. DRATEL: Right, so far, and we'll continue to
8 mark them, you know, as they come up --

9 THE COURT: Yes.

10 MR. DRATEL: -- but the point being they have not
11 made a sufficient showing of other co-conspirators. All of
12 their statements are hearsay. We believe there's no other
13 basis --

14 THE COURT: Look, look. Keep in mind. Just keep
15 this in mind. The mere fact that there's a conversation
16 between one of the defendants -- well, typically I guess most
17 of these conversations have involved your client speaking
18 with a third party -- doesn't take this out of the 801
19 (d)(2)(E) realm. For example, looking at 137, I'm going to
20 overrule that objection because it appears the reasonable
21 interpretation is that defendant Moalin is passing on
22 Sheikalow's request for support; that is the reasonable
23 inference. And this also provides context for Exhibit 138,
24 which is a conversation between defendant Moalin and
25 Sheikalow, as well as Exhibit 139. So 137 I think is

1 reasonably interpreted to be a conversation and to contain
2 statements that are made during and in furtherance of the
3 alleged conspiracy, so 137 is overruled.

4 I'll make note on the other -- on the other tapes
5 and give counsel an opportunity to -- to have those
6 eliminated if any of those calls are deemed not to be 801
7 (d) (2) (E) material.

8 MR. DRATEL: If, your Honor, I could just punch
9 out, on Exhibit 137, there's no other evidence that the other
10 parties to the conversation is a co-conspirator, and
11 therefore all of that person's statements are hearsay
12 regardless of whether Mr. Moalin's part of the conversation
13 were to come in or not. Thank you.

14 THE COURT: Okay.

15 MR. GHAPPOUR: Your Honor, if I could just join
16 that objection. I don't want to interrupt during --

17 THE COURT: Which objection, Mr. Ghappour?

18 MR. GHAPPOUR: The 801 (d) (2) (E).

19 THE COURT: On what call?

20 MR. GHAPPOUR: On exhibits 179 and 184.

21 THE COURT: On --

22 MR. GHAPPOUR: On 179 and 184.

23 THE COURT: Oh, in advance you want to --

24 MR. GHAPPOUR: Yes.

25 THE COURT: -- you want to lodge these? Once

1 again?

2 MR. GHAPPOUR: They're 179 and 184.

3 THE COURT: Okay. So you don't need to make
4 objections at that time.

5 MR. DRATEL: Your Honor, I would actually enumerate
6 the ones as well if you'd prefer me to do it --

7 THE COURT: All right. Go ahead.

8 MR. DRATEL: So 168, 175, 177, 178, 179, 180, 184,
9 and 190.

10 MS. MORENO: And, your Honor, on behalf of
11 Mr. Mohamud we would join those 801 (d)(2)(E) objections with
12 respect to those specific conversations.

13 THE COURT: Which ones?

14 MS. MORENO: The ones that have been enumerated.
15 For instance --

16 THE COURT: Well, they don't involve your -- do any
17 of those involve your client?

18 MS. MORENO: No, but it is a conspiracy --

19 THE COURT: Okay.

20 MS. MORENO: -- so they do --

21 THE COURT: Okay.

22 MS. MORENO: -- involve my client.

23 THE COURT: And you've gone over those
24 independently or you're just joining in the objection at this
25 point?

1 MS. MORENO: About every conversation in the case.
2 I'm not sure what your Honor is asking.

3 THE COURT: I'm asking you are you joining in
4 the -- each of the objections made by Mr. Dratel --

5 MS. MORENO: Yes, your Honor.

6 THE COURT: -- with respect to the exhibits he just
7 mentioned?

8 MS. MORENO: Yes, your Honor.

9 THE COURT: Okay. That's all I wanted.

10 MS. MORENO: Thank you.

11 MR. DRATEL: And, your Honor, just --

12 THE COURT: Go ahead, Mr. Dratel?

13 MR. DRATEL: Just -- I don't know if -- just make
14 it clear that we for Mr. Moalin are joining in the Rule 106
15 submissions of the co-defendants because they all obviously
16 involve Mr. Moalin on the call as well even though they're
17 being made by other counsel because they involve their
18 clients; we'd join them as well.

19 THE COURT: Mr. Durkin?

20 MR. DURKIN: Judge, I want to join in the
21 objections that Mr. Dratel's just enumerated on the calls --
22 involving all those calls he just enumerated. As I
23 understand it, they involve this Yusuf's, also known as
24 Hassan. And Yusuf pled guilty to a similar conspiracy -- I
25 noted it in a footnote in our trial memo -- it's a very --

1 almost identically described conspiracy in which Mr. Moalin I
2 believe is named as an unindicted co-conspirator. The reason
3 I have a separate objection to anything with respect to these
4 Yusuf calls involving our client is, for his purposes of this
5 conspiracy, the government knows that they interviewed Mr.
6 Yusuf, and Yusuf told them specifically that he was surprised
7 that our client had anything to do with this. And.

8 THE COURT: Well, that's not a proper basis for an
9 objection, so --

10 MR. DURKIN: Well --

11 THE COURT: -- I won't even consider that.

12 MR. DURKIN: -- your Honor --

13 THE COURT: I'm going to look at these -- I'm going
14 to look at these exhibits just straight up and determine
15 whether or not these -- these objections are well-taken. I'm
16 not going --

17 MR. DURKIN: Judge --

18 THE COURT: -- I'm not going to concern myself with
19 other cases or what your characterization of the evidence
20 might be. I know that a lot of your objections thus far have
21 been predicated on the basis that you feel there's not too
22 much evidence regarding your client.

23 MR. DURKIN: May I just --

24 THE COURT: I understand.

25 MR. DURKIN: Could I just finish so I can try to

1 tie it up? I understand that that's not an admissible piece
2 of evidence right now, but what I -- this goes back to my
3 request for a pretrial hearing or a written proffer regarding
4 the existence of the conspiracy. And I understand Ninth
5 Circuit law doesn't support it, but --

6 THE COURT: Okay. Mr. Durkin, you're going to be
7 given an opportunity to discuss this later. I want to give
8 everyone an opportunity to just for a few minutes break here.
9 We're in the middle of the morning. We may do this at the
10 side of the bench at some later point in time or after
11 today's proceedings --

12 MR. DURKIN: Could I --

13 THE COURT: -- but I don't want to unduly delay
14 this for the jury.

15 MR. DURKIN: Could I also -- then just reserve that
16 issue, but could I also raise one other issue regarding 106?
17 We have not decided yet, for our client, to put on a case, so
18 that --

19 THE COURT: Well, that would not -- I don't want to
20 hear that at this point.

21 MR. DURKIN: But what I --

22 THE COURT: No, no, that's not a proper objection.
23 That's argument. I'll hear that later, but you --

24 MR. DURKIN: No, no, no, Judge. You need to --
25 it's --

1 THE COURT: Mr. Durkin -- Mr. Durkin, you will be
2 given an opportunity to be heard but not right now. We need
3 to take a recess; we need to take ten minutes now. We're
4 going to finish our recess at this point, bring the jury back
5 in, and then proceed. Thank you.

6 (There was a break in the proceedings.)

7 THE COURT: Okay. Thank you for your patience,
8 ladies and gentlemen. We have everyone present, and we will
9 be continuing on. Mr. Cole?

10 MR. COLE: Thank you, your Honor.

11 BY MR. COLE: Q. Agent O'Very, just to pick up
12 where we left off before the break, we had just listened to
13 Government's Exhibit 140, February 9, 2008; do you recall
14 that?

15 A. Yes, sir.

16 Q. And at 4:14 on that transcript it's dated, that you sent
17 with Mohamad, is that what Mohamad Khadar was holding? Yes,
18 did it go through? Yes, we have sent it. Do you recall
19 that?

20 A. Yes, sir.

21 Q. Now, was there a call -- well, let's turn to Exhibit 141.
22 And what's the date on this call?

23 A. February 10, 2008.

24 Q. So the next date after February 9?

25 A. Yes.

1 Q. And was this another phone call with -- excuse me. In
2 this phone call is there a reference to Sheikalow on page 1?

3 A. Yes, sir.

4 MR. COLE: Can we play that.

5 (The audio recording was played.)

6 BY MR. COLE: Q. Now, if we can go to Government's
7 Exhibit 142, what's the date on this transcript?

8 A. February 13, 2008.

9 Q. And the speakers?

10 A. Basaaly and Sheik Mohamad.

11 MR. COLE: And if we could play the first clip.

12 (The audio recording was played.)

13 BY MR. COLE: Q. Agent O'Very, at 48 seconds on
14 that first page, what was the name referenced there?

15 A. Majadhub.

16 Q. And later in this conversation on this transcript, there
17 was the discussion of whether -- feedback on whether or not
18 he received what Dhunkaal had sent to him?

19 A. Yes, sir.

20 MR. COLE: If we could play this next clip.

21 (The audio recording was played.)

22 BY MR. COLE: Q. And if we could turn to
23 Government's Exhibit 143. What's the date on this next
24 exhibit?

25 A. February 14, 2008.

1 Q. Valentine's Day?

2 A. Yes.

3 Q. And was this a conversation between Basaaly and
4 Sheikalow, as indicated on the transcript?

5 A. Yes, sir.

6 Q. And was there discussion in this conversation again about
7 Dhunkaal?

8 A. Yes, sir.

9 MR. COLE: Let's listen to this.

10 (The audio recording was played.)

11 BY MR. COLE: Q. Now, if we could turn to
12 Government's Exhibit 39, previously admitted --

13 MR. COLE: And if we could highlight the two lines,
14 the two rows for February.

15 BY MR. COLE: Q. Now, Agent O'Very, in the call we
16 just listened to, if you look at page 1 of Government's
17 Exhibit 143 at 49 seconds, what does it say there?

18 A. It says Thank God. Did you receive Dhunkaal's --
19 Dhunkaal's stuff?

20 Q. And at :56 does it say Dhunkaal is asking whether you
21 received two pieces?

22 A. Yes, sir.

23 Q. And looking at page 2, line 1:17 to 1:19, what does it
24 say there?

25 A. Yes. Did you use the name Yusuf Mohamed Ali as the

1 receiver?

2 Q. And at line 1:29 do they discuss the amount is 2,000?

3 A. Yes, sir.

4 Q. Now, I want to take a look at Government's Exhibit 39.

5 Do you see the two rows there that are highlighted on the
6 screen?

7 A. Yes, sir.

8 Q. And the sender name, what is the sender name in those two
9 rows?

10 A. Dhunkaal Warfaa.

11 Q. And the receiver name?

12 A. The receiver name is Yusuf Mohamed Ali.

13 Q. And what is the amount of each of those two transactions
14 individually?

15 A. \$1300 from one and \$700 for the other.

16 Q. And \$1300 and \$700, how much does that total?

17 A. Two thousand.

18 Q. And if we could look back at Government's Exhibit --
19 excuse me -- 140 briefly, at line 4:14 and 4:16, can you read
20 that?

21 A. That you sent with Mohamad, is that what Mohamad Khadar
22 was holding?

23 Q. And down at 4:31, does Issa say no, no, the Dhunkaal one?

24 A. Yes, sir.

25 Q. And Issa says, at 4:35, yes, two.

1 A. Yes, sir.

2 Q. And then if we could look at Government's Exhibit 142
3 briefly, this was a conversation between Basaaly and Sheik
4 Mohamad; is that right?

5 A. Yes, sir.

6 Q. And if we can go to page 2, lines 5:04 and 5:05, does it
7 state, I told him to ask the man for a feedback on whether or
8 not he received what Dhunkaal had sent to him.

9 A. Yes, sir.

10 Q. Now, if we can go to Government's Exhibit 144, what's the
11 date on this transcript?

12 A. February 17, 2008.

13 MR. COLE: And if we could play this.

14 (The audio recording was played.)

15 MR. COLE: And if I could -- if we could see
16 Government's Exhibit 39 again. The two rows that we're
17 looking at, if we could highlight those, February, once
18 again.

19 BY MR. COLE: Q. What city is listed next to the
20 name Yusuf Mohamed Ali in both of those transactions?

21 A. Dhusa Mareeb.

22 Q. If we could turn to Exhibit 145, and what's the date on
23 this transcript?

24 A. February 26, 2008.

25 Q. And the transcript identifies the speakers as who?

1 A. Basaaly Saeed Moalin and an unidentified male.

2 Q. Let me show you -- are we looking at the same --

3 MR. COLE: Sorry. May I approach?

4 THE WITNESS: Exhibit 145?

5 MR. COLE: One moment, your Honor.

6 THE COURT: Okay.

7 MR. COLE: Your Honor, I'm approaching -- appears
8 that particular binder -- I think my binder is wrong. I'm
9 sorry, your Honor. Never mind. Apologies for that.

10 BY MR. COLE: Q. So it's identified as Basaaly and
11 an unidentified male. And if --

12 MR. COLE: I'm sorry, your Honor. I just wanted to
13 clarify something with counsel.

14 BY MR. COLE: Q. Okay. The speakers are
15 identified as Basaaly and an unidentified male?

16 A. Yes, sir.

17 MR. COLE: If we could play that.

18 (The audio recording was played.)

19 BY MR. COLE: Q. And, Agent O'Very, later in this
20 conversation does Basaaly and the other speaker, who I'll
21 make reference to again in a moment, do they have a
22 discussion about a phone number for someone named Aden?

23 A. Yes, sir.

24 MR. COLE: If we could play that.

25 (The audio recording was played.)

1 BY MR. COLE: Q. Now, Agent O'Very, if you could
2 look at line 5:57 and continuing down from there -- could you
3 read from 5:57 to 6:08.

4 A. Sure. Whose name is -- is the phone number at which you
5 contact the professor -- is it the one that -- that -- that
6 ends with 5-7? Are you referring to teacher Aden? Yes.

7 Q. And at page 3, 6:28 to 6:33, could you read that, those
8 lines.

9 A. He calls me from numerous ones that belong into him. But
10 the last one -- currently he has one that ends with 5-7.

11 Q. Now, let's look back at Government's Exhibit 143, which
12 we listened to a few moments ago, and was this the call we
13 listened to a few moments ago where Basaaly Moalin was
14 speaking to Sheikalow?

15 A. Yes, sir.

16 Q. And the phone number there indicated above the date, what
17 are the last two digits of that phone number?

18 A. Five-seven.

19 MR. COLE: Your Honor, with respect to Government's
20 Exhibit 145, the parties are in agreement and have a
21 stipulation that the other speaker on that call, who's
22 identified as the unidentified male, is in fact named
23 Abdirahman, A-b-d-i-r-a-h-m-a-n, and the transcript should
24 have reflected that, and we wanted to state that on the
25 record is that other speaker is Abdirahman.

1 THE COURT: That's the stipulation, counsel?

2 MR. DRATEL: Yes.

3 THE COURT: Okay. You seem to have full agreement
4 there.

5 BY MR. COLE: Q. Now, if we can turn to
6 Exhibit 146, and what's the date on this transcript, Agent
7 O'Very?

8 A. March 6, 2008.

9 Q. And is this another phone call, as identified in the
10 transcript, between Basaaly Moalin and Sheikalow?

11 A. Yes, sir.

12 MR. COLE: Let's play this call.

13 (The audio recording was played.)

14 BY MR. COLE: Q. Now, Agent O'Very, on that call,
15 at the first page of the transcript at :44, does Basaaly tell
16 Sheikalow, Yes, man, you changed your phone?

17 A. Yes, sir.

18 Q. And what are the last two digits now on the phone number
19 listed above the date on this transcript?

20 A. Four-two.

21 Q. And if we could turn back to Government's Exhibit 145,
22 the call we just listened to, looking at 6:49 to 6:54, and
23 starting with "right now," could you read from "But right
24 now" to the end of that section.

25 A. But right now I -- I mean -- what I am trying to say is I

1 know that this man cannot carry a specific phone that is
2 known to be his at all.

3 Q. And so Sheikalow's phone changed from the call on the
4 13th to the one on March 6?

5 A. Yes, sir.

6 Q. And if we could turn to Government's Exhibit 147 --

7 MR. COLE: Your Honor, at this time the United
8 States would ask the Court -- would request that the Court
9 take judicial notice of the fact that on February 26, 2008,
10 the United States Secretary of State designated al-Shabaab,
11 AKA al-Shabaab, also known as Shabaab, also known as The
12 Youth, also known as Mujahidin al-Shabaab Movement, also
13 known as Mujahidin Youth Movement as a foreign terrorist
14 organization; that the designation was published in the
15 Federal Register on March 18, 2008; and that the designation
16 has remained in effect since that time.

17 THE COURT: In the absence of objection and given
18 prior statements of counsel, the request is granted.

19 BY MR. COLE: Q. And so what's the date on this
20 next call, Government's Exhibit 147?

21 A. March 19, 2008.

22 Q. And in this call does Basaaly Moalin discuss al-Shabaab's
23 designation as a terrorist organization?

24 A. Yes, sir.

25 MR. COLE: And if we could play this.

1 (The audio recording was played.)

2 BY MR. COLE: Q. Now, Agent O'Very, what was the
3 name listed at 28:47 on page 2 of this transcript?

4 A. Aden, the religious scholar.

5 Q. Aden, the religious scholar. Can we turn back to
6 Government's Exhibit 145? Do you recall we were reviewing
7 this exhibit earlier, 145, talking about the last number
8 having ended with 5-7?

9 A. Yes, sir.

10 Q. And if we could look at page 2 of Government's Exhibit
11 145, can you read what is the name at 6:05 on that
12 transcript.

13 A. Teacher Aden.

14 Q. And if we could turn to the next call in order,
15 Government's Exhibit 148, what's the date on this call?

16 A. March 20, 2008.

17 Q. So that's just the day after the last transcript we
18 listened to?

19 A. Yes, sir.

20 MR. COLE: If we could play this.

21 (The audio recording was played.)

22 BY MR. COLE: Q. Now, after that -- can we turn to
23 Government's Exhibit 149? And what's the date on this
24 transcript?

25 A. March 30, 2008.

1 Q. And the transcript identifies the speakers as who?

2 A. Basaaly and Sheikalow.

3 MR. COLE: If we can play the first clip.

4 (The audio recording was played.)

5 BY MR. COLE: Q. Now, after greeting each other,
6 as they just did, if you look at page 2 of the transcript at
7 line 1:25 to 1:26, can you read 1:25 to 1:26, which is
8 something Sheikalow was saying to Basaaly.

9 A. Sure. Tell Sheik Mohamad that we are awaiting news from
10 him and news from you.

11 MR. COLE: If we could play that clip now.

12 (The audio recording was played.)

13 BY MR. COLE: Q. Turning to Government's Exhibit
14 150, did Basaaly Moalin have another phone call with
15 Sheikalow?

16 A. Yes, sir.

17 Q. And the date?

18 A. April 12, 2008.

19 Q. And in this call do they discuss that the rain has come
20 and the drought is over?

21 A. Yes, sir.

22 Q. And if you could look at page 2, 1:56 to 1:57, could you
23 read what's there.

24 A. Very much so. The help for the drought is over, so now
25 it is the time to finance the jihad.

1 MR. COLE: If we could play this clip.

2 (The audio recording was played.)

3 MR. COLE: Could you pause there.

4 BY MR. COLE: Q. Agent O'Very, if we could look at
5 line 3:19 through 3:30 on page 3 of this transcript we're
6 listening to. Starting at So be ready, can you read 3:19
7 through 3:30.

8 A. Sure. So be ready. Although you cannot do much about
9 big, high-speed planes, you can prepare for helicopters.
10 They would never come back if you destroy one.

11 Q. And can you read the line at -- on the next page at 3:42
12 through 3:44.

13 A. The Ethiopian helicopters are not a threat but the
14 Americans' are.

15 Q. And at line 4:03 to 4:06, does Basaaly say, Therefore, be
16 prepared for that scenario. Sheikalow, please do not take
17 what I am telling you lightly?

18 A. Yes, sir.

19 MR. COLE: If we could continue on in the call.

20 (The audio recording was played.)

21 MR. COLE: If we can pause here. Your Honor, we're
22 about ready to come to a passage in this transcript starting
23 at 4:58 where there's a reference to Sheik Mohamud -- not
24 Sheik Mohamad but Sheik Mohamud -- and the parties are in
25 agreement and stipulate that this person being referred to

1 here in this call and speaking later in the call is a Sheik
2 Mohamud; it is not the defendant Mohamad Mohamad Mohamud, and
3 we want to make that clear.

4 THE COURT: Okay. It's always nice to get the
5 assent of counsel on the record so that when appropriate, I
6 can advise the jury. So I assume everyone is in agreement.

7 MS. MORENO: So stipulated.

8 THE COURT: Okay. Well, ladies and gentlemen,
9 that's a point you should make note of at this time. With
10 respect to this particular transcript, page 4 of 8 -- and
11 we're talking about Exhibit 150, the conversation that took
12 place on April 12. The reference there at lines 4:58 to 5:03
13 is a Sheik Mohamud, and that is not a reference to defendant
14 Mohamud in this case.

15 MR. COLE: Okay. If we can continue.

16 (The audio recording was played.)

17 BY MR. COLE: Q. Now, Agent O'Very, if we can turn
18 to the next exhibit, 151, what's the date of this transcript?

19 A. April 12, 2008.

20 Q. And is this the same date as the transcript we just
21 listened to or we just -- we just viewed?

22 A. Yes, sir.

23 Q. And was this next call -- what's the time on the
24 transcript for 151?

25 A. 5:10.

1 Q. And was that within an hour of the time on the transcript
2 on 150 that we just were listening to?

3 A. Yes, sir.

4 MR. COLE: And if we could play --

5 BY MR. COLE: Q. And this call is between Basaaly
6 and someone identified as Abdulle on the transcript?

7 A. On Exhibit 151?

8 Q. Right.

9 A. Again, on mine it shows up as unidentified male.

10 MR. COLE: Apologies, your Honor. The parties
11 stipulate that the other speaker is Abdulle A-b-d-u-l-l-e;
12 it's currently identified as "unidentified male" in the
13 binder.

14 THE COURT: Right, in mine as well. So if the
15 jurors would like to make that correction. On page 1 of the
16 Exhibit 151, the individual who earlier was identified as
17 well unidentified, UM, is now Abdulle, A-b-d-u-l-l-e. Is
18 that the correct spelling, counsel?

19 MR. COLE: I'm sorry, your Honor.

20 THE COURT: A-b-d-u-l-l-e, is that the correct --

21 MR. COLE: Yes, yes. And my apologies. That is a
22 mistake on the United States's part, your Honor.

23 THE COURT: Please.

24 MR. COLE: If we could continue -- well, if we
25 could look then at this transcript 151 between Moalin and --

1 Basaaly Moalin and Abdulle, if we could play this call.

2 (The audio recording was played.)

3 BY MR. COLE: Q. And, Agent O'Very, if we can go
4 back to page 1 of this transcript at 4:28 where -- do you see
5 where it indicates that Basaaly says, quote, he is asking us
6 to go into our pockets. And can you read from 4:31 to 4:52.

7 A. Sure. I understand. That is Sheikalow. Yes. I
8 understand. So people -- what we want for these men, if they
9 are to eliminate those men. Yes. We must send someone to
10 talk to the people. We can find 30 men who can pay small
11 amounts.

12 Q. If we can turn to Exhibit 152 now, what's the date on
13 this transcript?

14 A. April 12, 2008.

15 Q. And does the transcript identity the speakers as Basaaly
16 and Sheikalow?

17 A. Yes, sir.

18 Q. And just to refer back, on Exhibit 150 there was another
19 conversation between Basaaly and Sheikalow on April 12; is
20 that right?

21 A. Yes, sir.

22 Q. So this is a second conversation with Sheikalow on that
23 same date?

24 A. Yes, sir.

25 MR. COLE: Go ahead and play it.

1 (The audio recording was played.)

2 MR. COLE: And if we could pause there.

3 BY MR. COLE: Q. Agent O'Very, do they go on to
4 discuss at this point advice that Basaaly Moalin has for
5 Sheikalow on how to attack men in Adaado?

6 A. Yes, sir.

7 MR. COLE: If we could continue playing.

8 (The audio recording was played.)

9 MR. COLE: Now, if we could just pause there for a
10 moment.

11 BY MR. COLE: Q. Agent O'Very, if I could direct
12 your attention to page 6 of this transcript at 10:01.

13 A. Yes, sir.

14 Q. Could you read from 10:01 to 10:27.

15 A. Sure. Brother, there are things to do every morning and
16 every day. Now that I am talking to you, there are so many
17 soldiers who are ready, but people have no money really. I
18 don't think if it is possible that 200 men will have bullets
19 to shoot at the enemy they can see. I understand. There
20 could be hundred -- hundred of things and the finance is zero
21 if you want the truth. I understand. Thank God no problem,
22 but if we had bullets for this enemy, we would have destroyed
23 them.

24 MR. COLE: Can you continue to play the clip.

25 THE COURT: In the future I think it would be

1 advisable if there's any reading to have the individual
2 parties to the conversation identified by the witness.

3 MR. COLE: Thank you, your Honor.

4 THE COURT: Up to now that hasn't been happening,
5 so from this point forward, I think it should.

6 MR. COLE: Yes, your Honor.

7 (The audio recording was played.)

8 MR. COLE: And if we could play --

9 BY MR. COLE: Q. If we could turn to Government's
10 Exhibit 153 -- now, the date on that last call we just
11 listened to, was -- was that April 12, 2008?

12 A. Yes, sir.

13 Q. And so was there a call at Government's Exhibit 153 that
14 lists the same date on the transcript, April 12?

15 A. Yes, sir.

16 Q. And are the speakers identified on the transcript as
17 Basaaly and Sheik Mohamad?

18 A. Yes, sir.

19 MR. COLE: And if we could play just the first
20 portion.

21 (The audio recording was played.)

22 BY MR. COLE: Q. And so after the greeting later
23 in the call -- if we could look at 1:22 on page 1, could you
24 read from 1:22 to 1:40 and this time identify the speaker.

25 A. Sure. Basaaly: I received repeated calls from the young

1 man these days. Sheik Mohamad: Right. Basaaly: He asked
2 where we are. He does not have anything to throw at them.
3 He is saying that the men are close to him.

4 MR. COLE: If we could play that.

5 (The audio recording was played.)

6 THE COURT: May we stop for just a moment, please.
7 This is a call from defendant Moalin and it indicates the
8 call is to Mohamad Mohamad Mohamud?

9 MR. COLE: Yes.

10 THE COURT: Okay. Now, for clarification is that
11 defendant Mohamud or is that another person?

12 MR. COLE: Defendant Mohamud, yes. Sheik Mohamad
13 defendant Mohamud, not the Sheik Mohamud that was referred to
14 in the call that you gave an instruction to the jury on,
15 which I can --

16 THE COURT: I think that clarification needed to be
17 made because there was earlier a Sheik Mohamud who was
18 identified in a prior call who was not defendant Mohamud.
19 This is defendant Mohamud here.

20 MR. COLE: Yes.

21 THE COURT: Okay.

22 (The audio recording was played.)

23 BY MR. COLE: Q. Now, Agent O'Very, if we could
24 look at page 2 of this transcript we just -- this call we
25 just listened to, do you see at two minutes and 13 seconds on

1 the transcript?

2 A. Yes, sir.

3 Q. And can you read there the speaker and then what is said
4 at 2:13 to 2:21.

5 A. Sure. Basaaly: He called me, so I passed the phone to
6 him as we were talking about matters.

7 Q. And that's referencing above to passing the phone to
8 someone named Moalin Mohamud?

9 A. Yes, sir.

10 Q. If we could look back at Government's Exhibit 150, at
11 page 4 of 150, and was this a phone call that's -- a phone
12 conversation between Basaaly and Sheikalow?

13 A. Yes, sir.

14 Q. And if you could look at 4:58 to 5:03 of page 4, could
15 you read 4:58 to 5:03.

16 A. Yes, sir. This is Sheikalow speaking: You did not join
17 the jihad and now you started building a mosque. Basaaly:
18 You are right. This is Sheik Mohamud. I will pass the phone
19 to Sheik Mohamud, okay?

20 Q. And so after this discussion of passing the phone to
21 Sheik Mohamud in Government's Exhibit 150 and Government's
22 Exhibit 153 in which Basaaly Moalin is speaking to defendant
23 Mohamad Mohamad Mohamud, can you look at -- I apologize. One
24 second. Look at page 2 of that transcript, Government's
25 Exhibit 153, lines 2:37 to 2:42, and could you read 2:37 to

1 2:42.

2 A. Yes, sir. Sheik Mohamad: Moalin Mohamud is a good man.
3 Definitely it is best that this thing does not become public,
4 you know.

5 MR. COLE: And, your Honor, we're at Exhibit 154,
6 and I can continue or if this is a convenient break, that
7 will be fine as well.

8 THE COURT: Okay, ladies and gentlemen. We'll take
9 our noon recess at this time and resume at 1:30. Please
10 remember the admonition not to discuss the case or make any
11 decisions at this time. Thank you.

12 (The jury left the courtroom.)

13 THE COURT: We're outside the presence of jurors.
14 Counsel, I think we'll be able to deal with several of these
15 objections at the end of the day, toward -- I don't know if
16 you'll finish this afternoon with these transcripts, but --

17 MR. COLE: Your Honor, one thing we let counsel
18 know is that we -- what with we plan to do if it's all right
19 with the Court is go a little bit longer after lunch, maybe
20 for about 20 or 30 minutes in transcripts, take a break from
21 that, have Agent O'Very off the stand, bring Mr. Bryden back
22 briefly to talk briefly about some specific context for some
23 transcripts, and then come back on and play the rest of the
24 calls.

25 THE COURT: Okay. Well --

1 MR. COLE: Just to give you a head's up --

2 THE COURT: Yeah.

3 MR. COLE: -- where we are.

4 THE COURT: It sure seems like before

5 cross-examination begins, we'll have an opportunity to have
6 the objections addressed.

7 MR. DRATEL: Thank you, your Honor.

8 MS. FONTIER: Thank you very much, your Honor.

9 (There was a break in the proceedings.)

10 THE COURT: Good afternoon, everyone. Let the
11 record reflect all jurors are present, counsel, and the
12 parties as well. Continuing on. Okay, Mr. Cole?

13 MR. COLE: Thank you, your Honor.

14 BY MR. COLE: Q. Agent O'Very, before the lunch
15 break I believe the last exhibit that we'd reviewed was
16 Government's Exhibit 153; do you recall that?

17 A. Yes, sir.

18 Q. And just to pick up where we left off before we go to
19 154, this was a phone call between defendant Mohamad Mohamud
20 and Basaaly Moalin?

21 A. Yes, sir.

22 Q. And to get us back in to where we left off, could you
23 just on page 1 identify the speakers; read 1:22 through 1:41.

24 A. Yes, sir. Basaaly: I receive repeated calls from the
25 young man these days. Sheik Mohamad: Right. Basaaly: He

1 asked where we are. He does not have anything to throw at
2 them. He is saying that the men are close to him. Sheik
3 Mohamad: Yes.

4 Q. Now, let's turn to Government Exhibit 154, and what is
5 the date on this transcript?

6 A. April 14, 2008.

7 Q. And the speakers are identified as Sheikalow and Basaaly?

8 A. Yes, sir.

9 Q. Okay.

10 (The audio recording was played.)

11 Q. Now, if we could turn to Government's Exhibit 155. That
12 last call was dated April 14. What's the date of this call?

13 A. April 17, 2008.

14 Q. And the speakers are identified on the transcript as
15 Sheik Mohamad and Basaaly?

16 A. Yes, sir.

17 MR. COLE: And if we could play this.

18 (The audio recording was played.)

19 BY MR. COLE: Q. Now, Agent O'Very, later on in
20 the call, on page 4 of this exhibit, is there a part at 5:07
21 where Basaaly states: Thirty people or 20 that you trust
22 will be enough. You tell them to pay this much, something
23 they can afford.

24 A. Yes, sir.

25 MR. COLE: Let's play that -- let's publish that

1 portion.

2 (The audio recording was played.)

3 BY MR. COLE: Q. If we can turn to Government's
4 Exhibit 156. And what is the date on this transcript?

5 A. April 21, 2008.

6 Q. And are the speakers identified as Basaaly, Issa, and
7 Najib?

8 A. Yes, sir.

9 MR. COLE: If we could play this for the jury.

10 (The audio recording was played.)

11 BY MR. COLE: Q. Agent O'Very, if you could turn
12 to Exhibit 157. What is the date on that transcript?

13 A. April 23, 2008.

14 Q. And are the speakers identified on the transcript as
15 Basaaly and Abdirizak?

16 A. Yes, sir.

17 MR. COLE: And I'd like to publish this portion and
18 then turn to Exhibit 39. Let's go ahead and publish this.

19 (The audio recording was played.)

20 BY MR. COLE: Q. Now, Agent O'Very, if we can look
21 at page 2 of this transcript, Government's Exhibit 157, at
22 about 1:19 on the transcript, after the long pause, can you
23 read from the -- from that pause to the end, identifying the
24 speakers.

25 A. Yes, sir. Abdirizak: Man, Dhunkaal has not taken the

1 money that was sent to him yet, all right? Basaaly:
2 Dhunkaal? When was it the one for Dhunkaal? What was the
3 date? Abdirizak: The one -- I am talking about the men.
4 Basaaly: Yes, I know, yes. Abdirizak: That last one, the
5 last 3,000. Basaaly: Yes. Abdirizak: He didn't receive
6 the last three. Basaaly: Yes.

7 MR. COLE: Now, if we could look at Government's
8 Exhibit 39, previously admitted, and if we could highlight on
9 the two rows in April.

10 BY MR. COLE: Q. And, Agent O'Very, do you see the
11 two rows dated April 23, 2008?

12 A. Yes, sir.

13 Q. And in the recipient name column, do you see the name
14 Dhunkaal in both of those lines?

15 A. Yes, sir.

16 Q. And the amount in the top line is how much?

17 A. \$1,900.

18 Q. And the amount in the second line?

19 A. \$1,100.

20 Q. And what is the sum of 1900 and 1100?

21 A. \$3,000.

22 Q. If we could turn to Government's Exhibit 158, and let me
23 just ask you before we do that, 157, that was a call on
24 April 23; is that right?

25 A. Yes, sir.

1 Q. And 158, what is the date on this transcript?

2 A. April 23, 2008.

3 Q. So the same day?

4 A. Yes, sir.

5 Q. And, in fact, if we could look at the time of those two
6 calls, the time on government's exhibit -- the time on
7 Government's Exhibit 157, on the transcript, is 18:04?

8 A. Yes.

9 Q. And what is the time on the next transcript, Government's
10 Exhibit 158?

11 A. 18:10.

12 Q. So, according to these two transcripts, within minutes?

13 A. Yes, sir.

14 Q. And who are the speakers identified on this transcript?

15 A. Basaaly and Sheik Mohamad.

16 MR. COLE: If we could publish this.

17 (The audio recording was played.)

18 BY MR. COLE: Q. Let's turn to Government's
19 Exhibit 159. Again, was this another call, 159, where the
20 transcript indicates the date of the call was April 23, 2008?

21 A. Yes, sir.

22 Q. And what's the time indicated on the transcript?

23 A. 18:19.

24 Q. So this is, again, minutes after the call we just
25 listened to?

1 A. Yes, sir.

2 Q. And who are the speakers identified on this transcript?

3 A. Basaaly Moalin and Issa Doreh.

4 MR. COLE: If we could publish this.

5 (The audio recording was played.)

6 BY MR. COLE: Q. Agent O'Very, the last line of
7 that transcript is, Basaaly: Okay. I will call you back?

8 A. Yes, sir.

9 Q. And so after this discussion with confusion over the name
10 of use for the transaction, was there a call moments later
11 again on April 23 at Exhibit 160?

12 A. Yes, sir.

13 Q. And the speakers identified on that transcript are who?

14 A. Basaaly and Issa.

15 MR. COLE: And if we could publish this.

16 (The audio recording was played.)

17 MR. COLE: We can pause there.

18 BY MR. COLE: Q. Now, Agent O'Very, there's a lot
19 of discussion in this transcript about what exact names were
20 used for the transaction, all right?

21 MR. COLE: If we can look at Government's Exhibit
22 39 again.

23 BY MR. COLE: Q. Now, taking a look again at
24 Government's Exhibit 39, which has been previously
25 admitted -- if we can first look at Government's Exhibit 160,

1 the call we're in the middle of listening to, at line -- at
2 about 2:36 on page 4 and -- actually going to 2:33, can you
3 read from 2:33 to 2:38, identifying the speakers as you go.

4 A. Yes, sir. Issa: And the person who sent it is -- is
5 Abdiweli Ahmed. Basaaly: Abdiweli Ahmed, okay. I
6 understand. I understand. I understand. I understand you
7 very well, you know.

8 Q. Now, if you can look, Agent O'Very, at Government's
9 Exhibit 39 next to the transaction -- the first transaction
10 dated April 23, 2008 --

11 A. Yes, sir.

12 Q. -- what is the name listed there for sender?

13 A. Abdiweli Ahmed.

14 Q. And the name listed as the receiver?

15 A. Dhunkaal Mohamed Yusuf.

16 MR. COLE: And let's switch back to the call then
17 where we left off and continue publishing.

18 (The audio recording was played.)

19 BY MR. COLE: Q. Okay. Looking back at
20 Government's Exhibit 39, looking at the same transaction we
21 were discussing a moment ago, April 23, 2008, Abdiwelli Ahmed
22 is sender and Dhunkaal Mohamed Yusuf is receiver, what is the
23 receiver city listed on Exhibit 39?

24 A. Dhusa Mareeb.

25 Q. And the transaction right below it, what's the city

1 location?

2 A. Dhusa Mareeb.

3 Q. And -- and Government's Exhibit 160, page 5 at about
4 2:56, can you read that portion from 2:56 to 2:57.

5 A. Sure. Basaaly: Can it be changed to Dhusa Mareeb? He
6 said that he is there.

7 Q. Let's now turn to Government's Exhibit 161, and what is
8 the date on this transcript?

9 A. April 24, 2008.

10 Q. Are the speakers on the transcript identified as Basaaly
11 and Sheikalow?

12 A. Yes, sir.

13 MR. COLE: If we could publish this.

14 (The audio recording was played.)

15 BY MR. COLE: Q. Agent O'Very, I want to look at
16 Government's Exhibit 39 again, but before we do, on this
17 Exhibit 161 can I focus your attention to page 2 at 1:29 to
18 1:40 and ask if you could read that portion.

19 A. Yes, sir. Basaaly: It is Mohamed. Ahem. It is
20 three -- it is three bundles. You will say it was sent from
21 San Diego.

22 Q. And then down below at about 1:50 to 1:55, does it
23 indicate, quote -- and this is again Basaaly speaking -- they
24 will break it because they do not want to show that the
25 transfer was one. Do you see that?

1 A. Yes, sir.

2 Q. If we could look at Government's Exhibit 39 now again and
3 focus on the two transactions that are identified as occurred
4 in April and the date-in column, I believe you testified
5 earlier that those two transactions total 3,000?

6 A. Yes, sir.

7 Q. If we could turn to Government's Exhibit 162 -- well,
8 before we do that, the date on Government's Exhibit 161 was
9 April 24?

10 A. Yes, sir.

11 Q. What's the date on Government's Exhibit 162?

12 A. April 24, 2008.

13 Q. And the speakers are identified as who?

14 A. Basaaly and Sheik Mohamad.

15 MR. COLE: And if we could publish this.

16 (The audio recording was played.)

17 BY MR. COLE: Q. Now, if we could turn to
18 Government's Exhibit 163, the date on the transcript is the
19 date of April 25, 2008; is that right?

20 A. Yes, sir.

21 Q. And the speakers are identified as Basaaly and Sheikalow?

22 A. Yes, sir.

23 MR. COLE: And if we could publish this.

24 (The audio recording was played.)

25 BY MR. COLE: Q. Agent O'Very, there at the end of

1 the passage we just listened to where Sheikalow says, quote,
2 what is going on, I received 1900 from the place -- do you
3 see that?

4 A. Yes, sir.

5 Q. If we could look back at Government's Exhibit 39. And
6 again, what is the amount of the first line, the first
7 transaction dated in April?

8 A. \$1900.

9 Q. If we can now turn to Government's Exhibit 164. Now,
10 this call on 164, is it dated April 25, 2008?

11 A. Yes, sir.

12 Q. And is that the same date that's on the transcript we
13 just reviewed?

14 A. Yes, sir.

15 Q. And according to the time stamps on those two
16 transcripts, is this call on 164 within the hour of the last
17 call?

18 A. Yes, sir.

19 Q. And who are the speakers identified on Government's
20 Exhibit 164 on the transcripts?

21 A. Basaaly Moalin and Sheik Mohamad.

22 Q. And was there an initial greeting?

23 A. Yes, sir.

24 MR. COLE: If we could listen to the greeting.

25 (The audio recording was played.)

1 MR. COLE: And if we could now play -- publish the
2 remainder of this transcript.

3 (The audio recording was played.)

4 BY MR. COLE: Q. Now, turning to Government's
5 Exhibit 165, was there another call dated on the transcript
6 April 25, 2008?

7 A. Yes, sir.

8 Q. Was this call identified as between Basaaly and
9 Sheikalow?

10 A. Yes, sir.

11 MR. COLE: And if we could publish that.

12 (The audio recording was played.)

13 BY MR. COLE: Q. If we could turn to Government's
14 Exhibit 166. Again, is this exhibit also dated April 25,
15 2008?

16 A. Yes, sir.

17 Q. And the speakers are identified as who?

18 A. Abdirizak and Basaaly.

19 MR. COLE: If we could publish.

20 (The audio recording was played.)

21 BY MR. COLE: Q. If we could turn to Government's
22 Exhibit 167. Now, we're finally off April 25. What's the
23 date on this transcript?

24 A. April 27, 2008.

25 Q. And the speakers are identified as who?

1 A. Basaaly and Sheik Mohamad.

2 Q. And in this call do Basaaly and Sheik Mohamad discuss the
3 names Majadhub and Sheikalow?

4 A. Yes, sir.

5 MR. COLE: If we could publish.

6 (The audio recording was played.)

7 BY MR. COLE: Q. And just two quick questions
8 about this transcript, Agent O'Very. If we could look back
9 at page 3 at about at 5:17 through 5:24, could you read this
10 portion, identifying the speaker.

11 A. Sure. Sheik Mohamad: So what I want from you is to tell
12 me the total he received. God willing, I want to let the men
13 who live in a far place know, and you can't ask many things
14 over the phone, you know.

15 Q. Now, if we could turn to Government's Exhibit 168, what's
16 the date of this call?

17 A. May 1st, 2008.

18 Q. And the speakers are identified as Basaaly and Hassan on
19 the transcript?

20 A. Yes, sir.

21 MR. COLE: And if we could publish this -- excuse
22 me. I'm sorry.

23 BY MR. COLE: Q. Before we do that, let me ask you
24 this question. Exhibits -- if you could look at briefly at
25 Exhibits 169, 170, 171, those three exhibits, Agent O'Very.

1 Are each of those exhibits dated May 1st, 2008?

2 A. Yes, sir.

3 Q. And do they all discuss a strike or bombing in Somalia?

4 A. Yes, sir.

5 Q. Okay.

6 MR. COLE: If we can first publish 168.

7 (The audio recording was played.)

8 BY MR. COLE: Q. If we could turn to Exhibit 169,
9 and if we could -- well, this is also dated May 1st, 2008,
10 Agent O'Very?

11 A. Yes.

12 MR. COLE: And if we could publish this exhibit.

13 (The audio recording was played.)

14 BY MR. COLE: Q. Now, Agent O'Very, at line 6:01
15 to 6:05 on this transcript, do you see where it says airplane
16 dropped -- again, the speaker is an unidentified male --
17 airplane dropped one missile on a house of three bedrooms
18 thought to be inhabited by the main man. Do you see that?

19 A. Yes, sir.

20 Q. And the next exhibit, 170, is there further discussion of
21 an event that had just happened?

22 A. Yes, sir.

23 Q. And if we could -- well, let me ask you this. The
24 speakers on Exhibit 170 are identified as who on the
25 transcript?

1 A. Basaaly Moalin and Sheik Mohamad.

2 Q. And do they discuss in this -- on this transcript
3 something announced by Roobow?

4 A. Yes, sir.

5 MR. COLE: If we could publish.

6 (The audio recording was played.)

7 BY MR. COLE: Q. Now, Agent O'Very, did you see
8 the reference on this exhibit at about 26 seconds to
9 Majadhub?

10 A. Yes, sir.

11 Q. And was that the same name discussed between Basaaly
12 Moalin and Sheik Mohamad, defendant Mohamad Mohamad Mohamud,
13 in Government's Exhibit 167?

14 A. Yes, sir.

15 MR. COLE: If we could play one more call at
16 May 1st, Government's Exhibit 171.

17 BY MR. COLE: Q. And, Agent O'Very, on the
18 transcript are the speakers identified as Basaaly and Issa?

19 A. Yes.

20 MR. COLE: If we could publish this.

21 (The audio recording was played.)

22 MR. COLE: Your Honor, at this point we would
23 request permission to temporarily excuse Mr. O'Very from the
24 witness stand and recall Matthew Bryden, who testified
25 previously.

1 THE COURT: How long do you anticipate Mr. Bryden's
2 testimony will be, both direct and cross?

3 MS. HAN: Your Honor, I'm not sure about
4 cross-examination. I think his direct would be about 25
5 minutes to an hour.

6 THE COURT: Okay. Very good. All right, Agent
7 O'Very, we will release you at this time obviously subject to
8 recall.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Well, it's -- why don't we take our
11 midafternoon recess; this seems to be a pretty good time to
12 do it. Ladies and gentlemen, 15 minutes, and remember the
13 admonition. Thank you.

14 (There was a break in the proceedings.)

15 THE COURT: Okay. Everyone is present.
16 Mr. Bryden, you have been previously sworn, and you're still
17 under oath.

18 THE WITNESS: Yes, your Honor.

19 THE COURT: All right. Thank you.

20 Matthew Bryden
21 was recalled by the government and, having been previously
22 sworn, testified as follows:

23 Direct Examination

24 BY MS. HAN: Q. Good afternoon, Mr. Bryden.

25 A. Good afternoon.

1 Q. I wanted to start off by referring you to Government's
2 Exhibit 122 in the binder in front of you. If you could
3 refer to that, please.

4 A. Okay.

5 Q. And specifically I wanted to refer you to a section
6 between time stamps 0902 to 0916; do you see that there?

7 A. Yes, I do.

8 Q. Okay. And do you see there where at 0902 Basaaly states,
9 Money is needed for the forces there in Bur Hakaba. And then
10 Ahmed Nasir responds, Right. And Basaaly then states, Their
11 salary for this month, and et cetera, is indeterminate, they
12 said. They are the -- the strongest men after those in
13 Mogadishu are these men.

14 Who are those men that Ahmed Nasir and Basaaly are
15 talking about? Who are they?

16 MR. DRATEL: Objection, your Honor.

17 BY MS. HAN: Q. What is your opinion about who
18 those men --

19 MS. HAN: I apologize, your Honor.

20 THE COURT: Hold on. There's a pending objection.
21 I was just trying to catch up. I think I've caught up. Just
22 refer my attention if you would to --

23 MS. HAN: Your Honor, it's between 902 --

24 THE COURT: It's on page 2.

25 MS. HAN: Yes, page 2 between 9:02 and 9:15.

1 THE COURT: Well, the objection is sustained. It's
2 calling for a conclusion on the part of the witness -- on the
3 part of the witness as to who other people were referring to.
4 "This is the strongest men" reference, is that what you have
5 reference to?

6 MS. HAN: Your Honor, before that where it says
7 money is needed for the forces there in Bur Hakaba.

8 THE COURT: Okay, forces. Okay. Absent some
9 further foundation, I will sustain the objection.

10 MS. HAN: That's fine, your Honor. I'll move on.

11 BY MS. HAN: Q. Mr. Bryden, I'm showing you
12 Government's Exhibit 25-B, already in evidence.

13 MS. HAN: If I could have Ms. Alejandre publish
14 25-B.

15 BY MS. HAN: Q. Mr. Bryden, who is in Government's
16 Exhibit 25-B?

17 A. That's Mukhtar Roobow, also known as Abu Mansoor.

18 Q. And what was his role -- what is his role in
19 al-Shabaab -- or what was his role in al-Shabaab in 2007 and
20 2008?

21 A. He was a senior member of al-Shabaab, a member of the
22 shura, and the spokesman.

23 Q. And did he also have an operational figure? Was he also
24 an operational figure?

25 MR. DRATEL: Your Honor, are we going to go over

1 his direct, his first direct, or -- I mean this is
2 repetitive.

3 THE COURT: Well, it is. These questions have been
4 asked and answered. Well, at least the question with respect
5 to Mr. Roobow. So be careful not to just merely repeat
6 things that have already been examined or delved into on
7 direct examination, original direct examination. But if you
8 need to ask a prefatory question just to orient people that
9 might have already been asked, that's okay.

10 MS. HAN: Thank you, your Honor. I think I'll
11 withdraw the question.

12 BY MS. HAN: Q. Did Roobow also have forces that
13 he was responsible for?

14 A. Yes, he did.

15 Q. And where were they based?

16 A. They operated in Bay region between Bur Hakaba,
17 Dhiinsoor, Dinoone (phonetic), those areas around Baidoa and
18 to the mainly -- well, throughout Bay and Bakool region.

19 Q. And using Government's Exhibit 25-B, could you please
20 write Roobow's name and the other names that he was known by
21 on that, please. If you could do that on the top there with
22 the Sharpie that's there. Thank you.

23 A. Okay.

24 Q. So I next wanted to refer you to Exhibit 127, please.

25 Are you there, Mr. Bryden?

1 A. Yes.

2 Q. Okay. And can I refer you to 01:55 where Basaaly is
3 saying, The only news is that the spokesperson for the
4 Banadir Regional Administration was eliminated last night,
5 yesterday. You understand?

6 A. Yes.

7 Q. Can I refer you to that section. First, what is the
8 Banadir region?

9 A. The Banadir region is the region around Mogadishu. It's
10 Mogadishu and its environs.

11 Q. And what is the regional administration? What is the
12 Banadir Regional Administration?

13 A. Well, at the time it was a regional administration, but
14 it's essentially a municipal administration running the
15 affairs of the town. And at that time it was under the -- it
16 was established by the Transitional Federal Government and
17 headed by Mohamad Dhere.

18 Q. And in the call, as we talked about, there's a reference
19 to the spokesperson for the Banadir Regional Administration;
20 who was that person?

21 A. The spokesperson was the person who issued statements on
22 behalf of the administration. I believe at the time it was
23 an individual known as Mohamed Muhyadiinali.

24 Q. And is that spelled M-o-h-m-e-d-m-u-h-y-a-d-i-i-n-a-l-i?

25 A. That was three words, yes.

1 Q. Yes. Okay. All right. I'd like to refer you next to
2 Exhibit 129, please. Are you there, Mr. Bryden?

3 A. Yes, I am.

4 Q. Okay. At Exhibit 129 I wanted to refer you to lines
5 10:21 through 10:33 where Hassan is telling Basaaly, I told a
6 man who is over there to -- a well-known respected man who on
7 top of that is not affiliated with Gar Guduud and Sharif but
8 instead affiliated with the others. Do you see that there?

9 A. Yes, I do.

10 Q. What does Gar Guduud mean?

11 A. Red Beard.

12 Q. And who is Sharif there?

13 A. Sheik Sharif, Sheik Sharif Sheik Ahmed.

14 Q. And the person Gar Guduud, who is that a reference to?

15 A. In --

16 MR. DRATEL: Object, your Honor, in terms of just a
17 conclusion on the part of what someone else is saying.

18 THE COURT: Well, the testimony has already come in
19 with respect to who this individual is. He's known as Red
20 Beard. The pending question -- repeat the question, Ms. Han,
21 please. Is it -- who is Gar Guduud?

22 MS. HAN: Your Honor, if I could withdraw that
23 question.

24 THE COURT: Okay.

25 BY MS. HAN: Q. I wanted to show you, Mr. Bryden,

1 Government's Exhibit 28-E and have Ms. Alejandre publish
2 that. And specifically I wanted to refer you to the photo
3 that's above the June to July 2006 section of 28-E. Do you
4 see that there?

5 A. Yes, I do.

6 Q. And who is that a photo of?

7 A. The lower photo?

8 Q. The photo above -- the lower photo, yes, right before the
9 section that says June to July 2006.

10 A. That's Hassan Dahir Aweys.

11 Q. Did he also -- does he also have a red beard in that
12 photograph?

13 MR. DRATEL: Objection, your Honor; leading.

14 THE COURT: Sustained.

15 BY MS. HAN: Q. The nickname Red Beard, is that
16 used to refer to Hassan Dahir Aweys?

17 A. It's one of his nicknames, yes.

18 Q. Okay. Additionally, in this phone call in Exhibit 129, I
19 wanted to refer you to 11 -- to 11:09 through 11:11. Are you
20 there?

21 A. Yes, I am.

22 Q. Okay. And do you see the area where it says -- where
23 Hassan's telling Basaaly, I am telling you a man who does not
24 actually belong to al-Sharif's men and instead belongs to the
25 other men, the young one. Do you see that?

1 A. Yes, I do.

2 Q. Are they also talking about Sheik Sharif there?

3 MR. DRATEL: Objection, your Honor, just as to what
4 they're talking about. He can say certain things, but he
5 can't say who they mean to talk about.

6 THE COURT: The objection is sustained. Are you
7 now referring to al-Sharif's men?

8 MS. HAN: Yes, your Honor.

9 THE COURT: I'll sustain the objection to the
10 question in the question's present form.

11 BY MS. HAN: Q. Okay. So we've talked about
12 Hassan Dahir Aweys and Sheik Sharif, right?

13 A. Yes.

14 Q. And can you refresh the jury's memory on who they were in
15 2007 and 2008.

16 A. In 2007 and '8, they were among the leaders of the
17 Alliance for the Reliberation of Somalia, which is an
18 opposition group to the Transitional Federal Government based
19 in Asmara, Eritrea, which was one of the groups as well
20 involved in fighting on the ground.

21 Q. And what was al-Shabaab's position as opposed to the
22 reliberation group, the ARS?

23 A. They were distinct from the ARS initially and considered
24 them to be less committed to the armed struggle. And then
25 when the ARS began to entertain the prospect of peace talks

1 with the Transitional Federal Government, they -- Shabaab
2 openly denounced the wing of the ARS that entered into dialog
3 with the government.

4 Q. And can I refer you to Government's Exhibit 178 at
5 Section 10:29.

6 A. Yes.

7 Q. Do you see there at 10:29 where Basaaly is telling
8 Hassan, Omar is from the elder group, right? Do you see that
9 there?

10 A. Yes, I do.

11 Q. And was the ARS also referred to as "the elder group" as
12 opposed to al-Shabaab, the youth?

13 A. Yes, it was.

14 Q. And was the ARS willing to negotiate with the Ethiopians?

15 A. Not directly with the Ethiopians, no.

16 Q. They were -- were they willing to negotiate for a
17 reconciliation, generally speaking?

18 A. Part of the ARS was.

19 Q. And was al-Shabaab willing to do so?

20 A. No.

21 Q. I next wanted to refer you to Exhibit 130.

22 A. Okay.

23 Q. Specifically to the time 5:25 through 5:29.

24 A. Yes.

25 Q. Do you see where --

1 THE COURT: Hold on, counsel. If you hear pages
2 turning still, that means not everybody is there. So we're
3 at 130. And where's the reference now, the internal
4 reference?

5 MS. HAN: It's on page 3, your Honor, at 5:25
6 through 5:29.

7 THE COURT: Okay. Thank you.

8 BY MS. HAN: Q. And do you see at 5:25 through
9 5:29 where Sheikalow is telling Basaaly, Even the groups
10 called Burundians were attacked the other night?

11 A. Yes, I do.

12 Q. And where is Burundi?

13 A. Burundi is in central Africa.

14 Q. And what was Burundi's role in Somalia at the time of
15 this call in early 2008?

16 A. Burundi was one of the two nations at the time that had
17 provided a contingent of forces to the African Union Peace
18 Support Operation, AMISOM.

19 Q. Okay. And moving on to another section further down on
20 the page on page 3 at 5:40 through 5:57 --

21 A. Yes.

22 Q. -- are you familiar with a person named Farah Garam Garam
23 F-a-r-a-h G-a-r-a-m G-a-r-a-m?

24 A. Yes, I am.

25 Q. And who is that person?

1 A. He was the -- considered a deputy to a militia leader, a
2 faction leader known as Mohamed Qonyare Afra. He was from
3 the group who had been associated with counterterrorism
4 efforts that I referred to in previous testimony.

5 Q. Is he now deceased?

6 A. Yes, he is.

7 Q. And is he -- and how is it that he died?

8 MR. DRATEL: Objection, relevance.

9 THE COURT: The objection is overruled subject to a
10 motion to strike.

11 THE WITNESS: He was --

12 MR. DRATEL: Your Honor, may we get a time frame
13 for that so we can --

14 THE COURT: I think that's forthcoming in the
15 answer; I just have a feeling it is. Go ahead and answer the
16 question, sir.

17 THE WITNESS: He was assassinated. He was killed.

18 BY MS. HAN: Q. Okay. And turning to the --

19 MR. DRATEL: Your Honor, when?

20 BY MS. HAN: Q. And when was that?

21 A. In the end of December 2007 to the best of my
22 recollection.

23 Q. Okay. And so turning back to Exhibit 130 on January 1st
24 of 2008, do you see the section there at 5:40 through 5:57?

25 A. Yes, I do.

1 Q. Okay. So you see that section where Basaaly states, The
2 other thing, the men, the men called, the bad guy, Garam
3 Garam, and the other filthy one. And Sheikalow says, The
4 spokesman? And Basaaly says, Yes, the way the mission was
5 conducted. And Sheikalow responds, They did it well. And
6 Basaaly then states, Yes, the mission was amazing, the damage
7 inflicted to those men. Do you see that there?

8 A. Yes, I do.

9 Q. Okay. And moving on to Government's Exhibit 131, please.

10 A. Yes.

11 MS. HAN: I'm going to ask Ms. Alejandre to put up
12 Government's Exhibit 4.

13 BY MS. HAN: Q. And while she's doing that, I
14 wanted to ask you about whether or not there -- there's the
15 use -- the standard use of addresses in Mogadishu.

16 A. No, no. Addresses in Mogadishu are generally made in
17 reference to a known landmark. There are some roads whose
18 names are known, but there are -- most of the city, you'd
19 have to explain through reference to landmarks how to find a
20 place.

21 Q. And can I refer you to the 7:44, the time stamp 7:44 on
22 page 3 of Government's Exhibit 131.

23 A. Yes.

24 Q. Okay. And do you see where at 7:44 Basaaly states, Look,
25 do you know where my house is located?

1 A. Yes.

2 Q. Sheikalow, do you know where my house is located?

3 A. Yes, I do.

4 Q. Okay. And down below that at 7:53, do you see where
5 Sheikalow states, It is located at Ex on the Huriwa side?

6 A. Yes, I do.

7 Q. And do you see how they continue to talk about the
8 location, onto the next page where they talk about, at
9 8:26 -- I'm sorry, 8:24 -- where Sheikalow states, Where is
10 it located, the one that is located at the Central? And
11 Basaaly says, At the Warshaddaha Road?

12 A. Yes.

13 Q. Okay. And using Government's Exhibit 4, could you please
14 use your pointer there and point out the area of Mogadishu
15 that Basaaly and Sheikalow are talking about where Basaaly's
16 home is.

17 A. This is the area referred to as Ex or Ex-Control. This
18 is Huriwa, Huriwa neighborhood, and Warshaddaha Road is this
19 one, so the area we're talking about is here.

20 Q. Okay. So in the area on the map on Government's Exhibit
21 4 where it says -- we're in that area where I believe it's
22 marked Huriwa on the map, and we're on the left side of that
23 Huriwa section; is that right?

24 A. That's correct.

25 Q. Okay. And then could you also -- and then I believe you

1 talked about the Warshaddaha Road?

2 A. Yes, this -- this one.

3 Q. Okay. And so it is a road that runs sort of diagonal
4 throughout the city; is that right?

5 A. That's correct.

6 Q. Okay. All right. I'd next like to refer you to
7 Government's Exhibit 133.

8 A. Yes.

9 Q. Specifically I wanted to show you -- refer to you to 1:39
10 through 1:47 where Ahmed Nasir is saying to Basaaly, So you
11 are saying that it had no plan and structure. And Basaaly
12 then responds, Yes, right now a structure is created for it,
13 some who fight against the police, some who fight against the
14 tax collectors, some who, you know, fight against the upper
15 administration. What is the -- what was the upper
16 administration?

17 A. That would be the senior officials of the Transitional
18 Federal Government.

19 MR. DRATEL: Objection, your Honor, just saying
20 what that is.

21 THE COURT: Well, the objection should have come
22 before the answer.

23 MR. DRATEL: I move to strike.

24 THE COURT: The objection is overruled.

25 BY MS. HAN: Q. And then down below -- in your

1 testimony last week, you talked about al-Shabaab's structure?

2 A. Yes.

3 Q. And you also talked about an entity within al-Shabaab
4 called amniyat?

5 A. That's correct.

6 Q. And what was -- what is amniyat within al-Shabaab?

7 A. Amniyat's function was -- is intelligence and
8 counterintelligence, and it's the division of al-Shabaab
9 tasked with targeted killings.

10 Q. Okay. And down below do you see the section at 1:51
11 where Basaaly is telling Ahmed Nasir that there are some who
12 carry out attacks against the camps and some who, you know,
13 solve the issue regarding the logistics between the groups?

14 A. Yes, I do.

15 Q. And turning to the next page, at 2:01 do you also see the
16 section where Ahmed Nasir is telling Basaaly, Every group is
17 told to send its own experts and, you know, information
18 gatherers to its own area?

19 A. Yes, I do.

20 Q. Okay. And next I wanted to refer you to Government's
21 Exhibit 136.

22 A. Okay.

23 Q. Before I do that, I wanted to show you Government's
24 Exhibits 23 and 24, already in evidence. So, Mr. Bryden,
25 Government's Exhibit 23, who is that again?

1 A. That's Nuur Hassan Hussein, or Nuur Adde.

2 Q. And can you write his name on Government's Exhibit 23.

3 A. Okay.

4 Q. And turning to Government's Exhibit 24, who is that?

5 A. That is Ahmed Abdiselan.

6 Q. And can you also write his name on his photograph,
7 please.

8 A. Okay.

9 Q. And I want to refer you now to the section of the call on
10 page 8 between 41:25 and 41:35.

11 A. Okay.

12 Q. Do you see there at 41:25 where Sheikalow is telling
13 Basaaly, Nuur Adde and Ahmed Abdiselan have arrived today.
14 And Basaaly then responds, Did they arrive in town?

15 Those are the two individuals in Government's
16 Exhibit 23 and 24, right?

17 A. That's correct.

18 Q. And do you see down below where Sheikalow then states, As
19 soon as they arrived at the presidential palace, we hit them
20 with 12 mortar shells, they fled to Qaran, Villa Somalia is
21 still smoking?

22 A. Yes.

23 Q. Okay. I next wanted to --

24 MR. DRATEL: Objection, your Honor. Move to
25 strike. That was not a question. It was --

1 THE COURT: Well, it is a question, but it is --
2 all the witness is doing at this point is indicating he's
3 seen a certain part of the transcript, which is nothing more
4 than reading what's already in evidence. The motion to
5 strike is granted.

6 BY MS. HAN: Q. Mr. Bryden, I next wanted to show
7 you Government's Exhibit 183 -- I'm sorry -- Government's
8 Exhibit 18, and also refer you to Government's Exhibit 173.

9 MS. HAN: And if I could have Ms. Alejandre put up
10 Government's Exhibit 18. I'm sorry. One moment, your Honor.

11 BY MS. HAN: Q. Mr. Bryden, who is in Government's
12 Exhibit 18?

13 A. That's Ahmed Abdi al-Mohamad Godane, the emir of
14 al-Shabaab.

15 Q. And in addition to going by Ahmed Abdi al-Mohamad, did he
16 also have other -- does he also have other nicknames?

17 A. Yes, Mukhtar, Mukhtar Abdirahman Abu Zubeyr.

18 Q. And what is his tribal affiliation?

19 A. He's a member of the Isaaq clan and specifically of the
20 Arab subclan.

21 Q. Sorry. What was the last part that you said?

22 A. The subclan Arab of the Isaaq.

23 Q. And is Arab spelled A-r-a-b?

24 A. Yes.

25 Q. And is Isaaq spelled I-s-a-a-q?

1 A. That's right.

2 Q. All right. I next wanted to refer you to Government's
3 Exhibit 178. Actually, Mr. Bryden, on Government's Exhibit
4 18, could you write Abu Zubeyr's name and his aliases as well
5 before we move on.

6 A. Okay.

7 Q. And I next wanted to show you Government's Exhibit 26.
8 Mr. Bryden, who is in Government's Exhibit 26?

9 A. That's Fuad Mohamed Qalaf or Fuad Shongole.

10 Q. And what was his role in al-Shabaab?

11 A. He was a senior figure, a member of the shura, and
12 commander of operational forces.

13 Q. And turning specifically to Government's Exhibit 178, do
14 you see a reference in Government's Exhibit 178 to a person
15 named Shongole?

16 A. Yes, I do.

17 Q. And what line is that?

18 MR. DRATEL: Object, your Honor; same basis.

19 THE COURT: Well, this may be preliminary. The
20 objection is overruled.

21 THE WITNESS: That's line 3:27.

22 BY MS. HAN: Q. And I believe that last week you'd
23 also testified about Fuad Shongole in the context of his
24 other work I believe. Other than being an operational
25 figure, I believe that you also talked about his fundraising;

1 is that correct?

2 A. I did. He served as a -- as a -- to solicit funds,
3 mobilize support over Internet forums.

4 MR. DRATEL: Your Honor, I move to strike the
5 previous question and answer. It was not preliminary to
6 anything.

7 THE COURT: I'm sorry. I didn't get that at the --

8 MR. DRATEL: Move to strike the previous question
9 and answer because it was not preliminary to anything. This
10 was a separate question. This is a separate question. It
11 has nothing to do with the transcript.

12 THE COURT: Do you have any other questions on this
13 particular individual --

14 MS. HAN: On Mr. Shongole, no.

15 THE COURT: -- of this witness?

16 MS. HAN: I just wanted to -- Mr. Bryden to write
17 his name on Government's Exhibit 26.

18 THE COURT: The objection is sustained. The motion
19 is granted. The jury is admonished to disregard the last
20 question and answer as cumulative, asked and answered.
21 Remember the sauce rule, please.

22 MS. HAN: I apologize, your Honor.

23 BY MS. HAN: Q. If I could ask -- refer you to
24 Exhibit 181, please, and specifically if I can refer you to
25 4:35 through 4:51.

1 A. Yes.

2 Q. Do you see where Kay is saying, Hey -- I'm sorry. Above
3 that Basaaly is saying, Now there is only a guy, there are
4 many Karate. Which Karate is it, man? And below that Kay
5 responds, Hey, a guy who was arrested in Nairobi, brought to
6 Ethiopia, who escaped from Ethiopia, came here, and used to
7 go with Sheik Hassan and the guy who died who was a teacher
8 and used to teach at the Italian cemetery, a guy by the name
9 of Mahad, Mahad Karate. Have you seen that guy? Do you see
10 that section?

11 A. Yes, I do.

12 Q. Okay. And in that section they make a reference to the
13 Italian cemetery?

14 A. Yes.

15 Q. What is the Italian cemetery?

16 MR. DRATEL: Objection, your Honor. It's what
17 they're referring to.

18 THE COURT: The objection is overruled on that
19 ground.

20 THE WITNESS: The Italian cemetery was the place I
21 referred to in previous testimony. It was a colonial-era
22 cemetery from the period of Italian colonial rule. And in
23 December 2005/January 2006, it was occupied by Aden Hashi
24 Ayrow and forces loyal to him. They disinterred the remains,
25 and they established a center on the grounds of the Italian

1 cemetery, a base and a mosque.

2 Q. I next wanted to refer you to Exhibit 182.

3 THE COURT: You meant to make the objection on the
4 ground that it had been asked and answered --

5 MR. DRATEL: That is --

6 THE COURT: -- rather than the Italian cemetery is
7 the Italian cemetery?

8 MR. DRATEL: Well, no, in terms of -- two things.
9 One is asked and answered. I didn't know that was going to
10 be that answer; that was precisely the same as it was in the
11 first direct. But also because he's being asked to conclude
12 about what they were referring to as well. So both of those,
13 your Honor.

14 THE COURT: Well, I didn't think the second ground
15 was part of the question. Once again, counsel, Mr. Bryden
16 testified at length as to the Italian cemetery, what happened
17 to the -- at the Italian cemetery, what that -- what effect
18 that had on certain people and groups, and so that has been
19 asked and answered. So I'll ask you not to have the witness
20 just refer to a part of a transcript now and use that as a
21 basis for repeating prior testimony. If there's something
22 new to add, if there's value added here in a particular
23 question, that's fine, but just to have the evidence repeated
24 is something we're trying to avoid in the interest of time.

25 MS. HAN: Of course, your Honor.

1 BY MS. HAN: Q. Mr. Bryden, I believe -- did we
2 move on to Government's Exhibit 182? Are you now at Exhibit
3 182?

4 A. Yes.

5 Q. Okay. And do you see that at the top of the call on
6 page 1, do you see the date at the top of the call?

7 A. Yes, I do.

8 Q. Okay. And is that date July 2, 2008?

9 A. Yes, it is.

10 Q. And in early July of 2008, was there fighting going on in
11 Matabaan between --

12 MR. DRATEL: Objection, your Honor; leading. I
13 mean I know I'd like to hear his answer, but --

14 THE COURT: The objection is overruled. Would you
15 please state your question in full. You started to --

16 MS. HAN: Yes, your Honor.

17 THE COURT: -- close to it.

18 JUROR NO. 9: Mine starts at page 4 of 7.

19 THE COURT: Whoa. Who's speaking?

20 JUROR NO. 9: I'm sorry.

21 THE COURT: Okay. Please, Ms. Freni -- that's
22 okay.

23 JUROR NO. 9: She looked at me, and --

24 THE COURT: If you have no -- anytime I see
25 interaction between a juror and any attorney in the case, I

1 get a little concerned. So if you do have a question though
2 or something was unclear, feel free to raise your hand,
3 direct your question to me, and I'll be happy to assist you
4 in that regard. I appreciate your request for clarification.
5 Mr. Cole?

6 MR. COLE: Your Honor, I think the reference was an
7 indication that she had pages missing from her binder.

8 THE COURT: Is that the --

9 JUROR NO. 9: Yes, Exhibit 182, mine starts at page
10 number 4. I have 4, 5, and 6 of 7 only.

11 THE COURT: Well, we'll get you those pages. Do
12 you have extra copies at this point?

13 MR. COLE: I'm just showing counsel now, your
14 Honor.

15 THE COURT: Okay. And I invite any juror who for
16 any reason may have missed a page or doesn't have a page or
17 more in their binders, raise your hand, let me know, get my
18 attention in some way, and we'll get that material to you.
19 Would you give it to the CRD, please. Ready to go? Thanks,
20 Ms. Freni.

21 MS. HAN: Thank you, your Honor.

22 BY MS. HAN: Q. Mr. Bryden, I believe my question
23 was in early July 2008, was there fighting going on in the
24 Matabaan region of Somalia?

25 A. Yes, there was.

1 MS. HAN: Okay. And if we could put up
2 Government's Exhibit 4 -- I apologize -- Government's Exhibit
3 2. I apologize, Ms. Alejandre.

4 BY MS. HAN: Q. Mr. Bryden, looking at
5 Government's Exhibit 2, what is -- where is Matabaan, using
6 your pointer?

7 A. It's here between -- just north of Beledweyne and to the
8 southwest of Dhusa Mareeb.

9 Q. And who was fighting in Matabaan in early July 2008?

10 A. There was fighting between Ethiopian forces and
11 al-Shabaab and some fighters from other groups.

12 Q. And did those other groups include a group called Jabiso?

13 A. Yes, they did.

14 Q. And I wanted to refer you specifically to a portion in
15 the call at 10:42 through 10:53, but before we get there, I
16 wanted to ask you if you're familiar with a person named
17 Asporo?

18 A. Yes, I am.

19 Q. Who is Asporo?

20 A. Asporo -- I believe his full name was Abdullahi Ahmed
21 Asporo. He was a Somali Canadian. He was a senior manager
22 at a money transfer company known as al-Barakat, and then
23 al-Barakat was closed down, and Asporo then reemerged as one
24 of the leading figures within the Islamic courts.

25 Q. And was Asporo's death a significant event that was

1 widely publicized?

2 A. Yes, it was, both in Somalia and in Canada.

3 Q. And I next wanted to refer you to Government's Exhibit
4 183.

5 A. Yes.

6 Q. So at Government's Exhibit 183, I wanted to refer you to
7 the section between 7:53 and 8:16. Beginning first with at
8 7:53, Roobow states, The conference is about the attacks that
9 our troops waged last night against the camps of Ethiopians
10 as well as those of the apostates, attacks that God made
11 successful for us and disastrous for the enemy.

12 Roobow uses a term there, "apostate." What's the
13 meaning of the word "apostate"?

14 MR. DRATEL: Objection, your Honor. It's a word in
15 the dictionary.

16 THE COURT: Well, the objection is overruled. You
17 may answer that, sir.

18 THE WITNESS: That would be someone who has
19 renounced the Islamic faith.

20 BY MS. HAN: Q. And then right below that, Roobow
21 states, The mujahedin waged an attack in the middle of the
22 night against the headquarters of the apostate government
23 headed by Abdullahi and the Tigrean troops of Meles Zenawi in
24 Baidoa.

25 They use a term there, "mujahedin," that I don't

1 believe that you defined last week. What does that term
2 mean?

3 A. "Mujahedin" is a term that members of the Islamist
4 factions in Somalia use to refer to their fighters.

5 Q. And then Roobow also uses the term, The Tigrean troops of
6 Meles Zenawi. So Meles is M-e-l-e-s Z-e-n-a-w-i. Who is
7 Meles Zenawi?

8 A. Meles Zenawi was at the time prime minister of Ethiopia.

9 Q. And the word -- the phrase "Tigrean troops," the word
10 "Tigrean" what is that a reference to?

11 A. It's Tigrean --

12 MR. DRATEL: Objection, your Honor, as to what it's
13 a reference to.

14 BY MS. HAN: Q. What does that mean, Tigrean?

15 MR. DRATEL: It's asking --

16 THE COURT: Hold on. If there's an objection, just
17 give me a moment to rule on it.

18 MS. HAN: Yes, your Honor.

19 MR. DRATEL: Just asking for a conclusion on the
20 part of the witness as to someone else's conversation.

21 THE COURT: Your question is what?

22 MS. HAN: What is Tigrean on line 8:10.

23 THE COURT: The objection is overruled. You may
24 answer that.

25 THE WITNESS: Tigrean refers to the region of Tigre

1 in northern Ethiopia, which is where Meles Zenawi is from and
2 the -- the ruling party in Ethiopia, the Ethiopian
3 People's -- EPRDF -- Revolutionary Democratic Front, is
4 anchored in the Tigrean People's Liberation Front; that's the
5 core of the ruling party. So the party's from Tigre.

6 MS. HAN: Okay. One moment, your Honor. I have no
7 further questions.

8 THE COURT: Cross-examination on any of these
9 matters?

10 MR. DRATEL: Yes, your Honor.

11 Cross-Examination

12 BY MR. DRATEL: Q. Good afternoon, Mr. Bryden.

13 A. Good afternoon.

14 Q. You were asked about fighting in the 2007-2008 period in
15 Somalia, right?

16 A. That's correct.

17 Q. Just a little bit of background. There's a broad
18 insurgency against both Ethiopia and the TFG, correct?

19 MS. HAN: Objection; outside the scope of direct.

20 THE COURT: The objection is sustained unless it's
21 limited to that one reference, that was fighting in the
22 Matabaan region.

23 MR. DRATEL: Well, your Honor, there's also Bur
24 Hakaba and -- is how it started out, and the --

25 THE COURT: If it's related in any way to the

1 fighting in the Matabaan region, then please, go ahead. But
2 if it's not, then --

3 MR. DRATEL: But he was also asked about forces in
4 Bur Hakaba. It was first call, Exhibit 122.

5 THE COURT: If it's related to any of the areas
6 that the witness has testified about today --

7 MR. DRATEL: Right.

8 BY MR. DRATEL: Q. So there were -- in -- in these
9 areas that you've talked about today, a lot of these groups
10 are active, correct, militarily?

11 MS. HAN: Objection, vague.

12 THE COURT: Overruled.

13 THE WITNESS: Several groups but in different
14 areas. Some groups -- some areas -- some groups would have
15 been specifically associated with some areas, and then there
16 were some areas where you would find different groups working
17 together.

18 BY MR. DRATEL: Q. But even if one area was
19 identified with a particular group, didn't exclude another
20 group from operating in there at a particular time or
21 particular day?

22 A. It didn't exclude it, it's just that some groups for
23 various reasons mainly confined themselves to certain areas.

24 Q. And with respect to these groups in these areas, they
25 were fighting against Ethiopians on one level, right?

1 A. Correct.

2 Q. They were fighting in some instances against each other,
3 correct?

4 A. I don't -- there may have been some incidents but between
5 the Islamist factions and except for another part of the
6 country, Kismaayo, it didn't happen very often.

7 Q. I don't mean just the Islamist factions, but let's say
8 Islamist and local militias or warlord militias in these
9 areas.

10 MS. HAN: Objection; outside the scope of direct.

11 THE COURT: I'm sorry?

12 MS. HAN: Outside the scope of direct.

13 THE COURT: No, counsel is confining himself to
14 those areas or those conflicts that the witness talked about
15 on direct examination. Mr. Bryden, you understand that to be
16 the scope, the limitation of any questions related to
17 fighting at this point?

18 THE WITNESS: I do, your Honor.

19 THE COURT: Okay.

20 THE WITNESS: That's correct to the extent that the
21 forces of the Transitional Federal Government were
22 essentially militias often headed by faction leaders.

23 BY MR. DRATEL: Q. And you were asked about
24 Government's Exhibit 129, a tape, a transcript. And if I --
25 you read it, 11:55, 11:66 -- I'm sorry. Withdraw. You read

1 up to 11:06 to 11:11, and I'll just go down a little bit
2 further in that same conversation and talk -- you see at
3 11:37 to 11:45, right?

4 A. Yes, I do.

5 Q. Says the Bay area, the Jubbada, the Shabelle, and Hiraan?

6 A. Yes.

7 Q. Those are all areas of Somalia?

8 A. Yes, they are.

9 Q. And are those all areas where Ethiopian troops were
10 present during this time period?

11 A. All -- I'm not clear on which date they left the Jubbas,
12 but broadly speaking during this time period, yes.

13 Q. Now, some of the -- you were asked about conversations
14 and people talking about things in conversations, and for the
15 most part it's fair to say that what's in those conversations
16 is available and open source information, right? For
17 example, the Garam Garam assassination, on public, right?

18 A. That's correct.

19 Q. And he'd been a warlord, right?

20 A. He'd been a deputy to a warlord, yes.

21 Q. And warlords had popularity issues in Somalia in 2007 and
22 2008 among a fair section of the populace, right?

23 A. A lot of people didn't like warlords.

24 Q. And you were asked about -- there was one section of a
25 tape -- of a transcript you were asked about Ethiopians being

1 killed. And is "gallo" a term that is used for Ethiopians
2 among Somali -- that Somalis use to describe Ethiopians?

3 A. It's used to describe -- it means infidels. It's used to
4 describe non-Muslims.

5 Q. But is it also used to describe Ethiopians in particular?

6 A. No, not in particular.

7 Q. And while all this is going on in these areas that we're
8 talking about today in terms of fighting and militarization
9 and occupation by the Ethiopians or by militias and fighting
10 between various factions, there is also still a humanitarian
11 crisis going on in many of these areas as well, right?

12 A. That's correct. That's also linked to the violence.

13 Q. Yes. And you were asked about the ARS, right, during
14 this time period?

15 A. Yes.

16 Q. And is it fair to say that with respect to the ARS --
17 withdrawn. We'll start with sort of reconciliation issues as
18 a whole you were asked about, right, in terms of negotiation
19 with Ethiopians, negotiation with TFG, attempts in that
20 regard. There were a lot of different alliances over time;
21 is that fair to say?

22 A. Yes.

23 Q. And there was a lot of splintering over time; is that
24 fair to say?

25 A. Yes.

1 Q. Even among the ARS itself, there was splintering over
2 time --

3 A. Yes.

4 Q. -- from the outset with respect to some people agreeing
5 to do some things and some people not agreeing?

6 A. That's correct.

7 Q. But it's fair to say that al-Shabaab was distinct and not
8 a part of that effort really ever, right?

9 A. That's right.

10 Q. And the al-Shabaab's position versus the TFG was always
11 categorical opposition, right?

12 A. That's right.

13 Q. Same with respect to its position as to Abdullahi Yusuf,
14 the president of the TFG?

15 A. That's right.

16 Q. Now, you were asked about the emir of al-Shabaab; is that
17 gentleman the emir of al-Shabaab today?

18 A. Ahmed Abdi Godane?

19 Q. Yes.

20 A. Yes, he is.

21 Q. Al-Shabaab exists today, correct?

22 A. Yes, it does.

23 Q. You were asked about apostasy, right --

24 A. Yes.

25 Q. -- apostates. And isn't it true that one of the issues

1 with respect to al-Shabaab in its conflict with other groups
2 in Somalia is its aversion of apostates, right?

3 A. That's correct.

4 Q. That they believe that some Muslims are not real Muslims
5 because they don't follow the same rules that al-Shabaab
6 follows, right?

7 A. That's right.

8 Q. And, in fact, they think Sufis are apostates, right?

9 A. I'm not sure I've heard them refer to them that way, but
10 in terms of their ideology, I think that's fair.

11 Q. And for al-Shabaab the penalty for apostasy is death?

12 A. That's right.

13 Q. Now, mujahedin, you were asked about mujahedin, right?

14 A. Yes.

15 Q. Isn't origin of -- the modern term "mujahedin," at least
16 since 1979, originated with those in Afghanistan who were
17 fighting the Soviets, right?

18 A. That's right. It means someone who's waging jihad, a
19 holy war.

20 Q. And -- but in terms of since 1979, that was the
21 predominant sort of regeneration of that term; is that fair
22 to say?

23 A. I believe so.

24 Q. And you said that the Islamist factions would
25 occasionally describe their fighters as mujahedin, right?

1 A. Routinely, yes.

2 Q. Routinely. And those Islamist factions included more
3 factions than just al-Shabaab, right?

4 A. That's right.

5 Q. It was across the entire Islamic spectrum?

6 A. That's right.

7 MR. DRATEL: I have nothing further, your Honor.

8 THE COURT: Any further cross-examination?

9 MS. MORENO: No, your Honor.

10 MS. HAN: No.

11 THE COURT: Thank you, Mr. Bryden. You are excused
12 subject to recall, or not necessary?

13 MS. HAN: No, your Honor.

14 THE COURT: Okay. Very good. Thank you, sir.

15 Would you like to continue or address matters outside --

16 MR. COLE: Whatever your pleasure is, your Honor.

17 THE COURT: Well, it's your schedule. I don't know
18 how you're doing. If you'd like to come to the side of the
19 bench only to discuss timing, I'd be happy to see you here.
20 Ladies and gentlemen, we'll be with you very shortly, okay?
21 Feel free just to relax where you are and spread your legs --
22 oh, dear, no -- stretch your legs.

23 (Following is a sidebar conference.)

24 THE COURT: (Laughter) This is dangerous, I know,
25 very, very dangerous. Let me ask what your thoughts are

1 about scheduling. I know we had talked a little about
2 stopping a little early so that we could address some
3 matters.

4 MR. COLE: That's fine. We have about -- I think,
5 looking at the binder, I think about 20-odd calls to go with
6 Colby O'Very. After that, all we have are very short
7 five-minute phone company witnesses. And so if your Honor
8 wants to stop now --

9 THE COURT: So basically you're saying you'll
10 finish tomorrow.

11 MR. COLE: Tomorrow morning.

12 THE COURT: Tomorrow morning, Wednesday morning,
13 okay, true to your word.

14 MR. DRATEL: We'll have cross, obviously, of
15 Mr. O'Very, Agent O'Very.

16 MR. COLE: That's true.

17 THE COURT: Yeah, okay. Are you going to take that
18 long or --

19 MR. DRATEL: No. I have to go back and look at
20 what -- I mean the sauce rule.

21 THE COURT: The sauce rule. Remember the sauce,
22 that's important, because --

23 MR. DRATEL: No, no, no. I was --

24 THE COURT: Okay.

25 MR. DRATEL: -- fully cognizant of the sauce rule.

1 THE COURT: Okay. Let's -- Mr. Ward, you're
2 looking querulous at this point.

3 MR. WARD: No, no. I just couldn't hear, your
4 Honor.

5 THE COURT: Okay. The sauce rule is pretty
6 cryptic, but from time to time I like to refer to it.

7 MR. COLE: So we're happy to stop today if you want
8 or call Colby, but we can't finish him today.

9 THE COURT: No, no, no. I just -- I told the jury
10 I'd give them a little bit of a feel for where we are. So
11 you're going to be ready to go let's say by tomorrow
12 afternoon.

13 MR. DRATEL: Oh, I don't know about that.

14 THE COURT: All right, Thursday.

15 MR. DRATEL: Thursday.

16 THE COURT: Okay. So we're looking -- how many
17 days do you anticipate -- have you run the deposition
18 transcripts to --

19 MS. FONTIER: Well, the final edits are still being
20 done, which is why we're saying we're not positive we'll be
21 able to begin.

22 THE COURT: What do you think, a couple days?

23 MS. FONTIER: The depositions are a couple of days,
24 two or three more witnesses, but yeah, I'd say --

25 MR. DRATEL: Early next week, even late this week.

1 I think early next week.

2 THE COURT: So we're looking at concluding the
3 evidence by Tuesday or Wednesday.

4 MS. MORENO: Or if we have a rebuttal case, your
5 Honor.

6 THE COURT: That's fine, Tuesday --

7 MS. FONTIER: Wednesday, Thursday, Friday. Who
8 knows?

9 THE COURT: So we -- keep in mind that next Friday,
10 a week from Friday, is a down day, so we may actually be
11 getting this case to the jury the beginning of the following
12 week.

13 MR. DRATEL: The 19th.

14 THE COURT: The 18th is holiday. So I'll tell them
15 that's the rough schedule we're working on. We can knock
16 this down now. I can go over some matters, legal matters, I
17 have some rulings for you at least on the transcripts. I've
18 read through all the transcripts and the 801 (d) (2) (E)
19 issues, and then we'll need time -- I'll need time to go over
20 the rest of the 106 issues. I've got some of those already
21 finished. So I think that's kind of where we are at this
22 point.

23 MS. FONTIER: Okay. Thank you, your Honor.

24 MR. GHAPPOUR: Your Honor, if I could just join all
25 of the calls related to the 801 (d) (2) (E).

1 THE COURT: This is substance. We don't do
2 substance. All right.

3 (Sidebar conference concludes.)

4 THE COURT: All right, ladies and gentlemen. Thank
5 you for your patience. We are going to stop today. It's
6 just a few minutes before four o'clock. We're stopping
7 today. Today is Tuesday, the 5th. And I think it's
8 foreseeable -- I'll give you just a general estimate of where
9 we are right now and when we expect to finish and have the
10 case to you; once again, this is just -- this is just a range
11 at this point, an estimate.

12 It looks as though the government will conclude its
13 case-in-chief sometime tomorrow, Wednesday -- exactly when we
14 don't know -- and that the defense will start its case
15 tomorrow, Wednesday, or Thursday, the 7th.

16 Now, the defense case may take several days, and
17 remember, that means that we'll be extending into next week
18 with the evidence, into next week with the evidence. Next
19 Monday would be the 11th. And remember that on the 15th,
20 Friday, we're not in session on this case. So we have four
21 days next week to conclude all of the evidence in the case,
22 which seems pretty likely at this point, concluding the
23 evidence next week, which means that the case should get to
24 you sometime the week of the 18th. Now, remember,
25 February 18 is a holiday, so we will not be in session on the

1 18th; that's Presidents Day.

2 I think you should anticipate the case being argued
3 and presented to you probably in the range of the 19th and
4 20th of February. So if I had to guess right now -- and it
5 would only be an educated guess -- the case gets to you about
6 February 20 give or take. Okay.

7 Mr. Bilse, I'm still aware that you have your
8 commitment on Thursday and that we need to modify the hours a
9 little bit. That won't affect tomorrow, so tomorrow should
10 be a regular day for us starting at nine o'clock, and then
11 we'll continue on through the day. So any questions about
12 scheduling at this point that I haven't -- that I haven't
13 addressed? And please keep in mind this is only an estimate.
14 I've tried to give you the estimate at an appropriate time in
15 the case when we began to develop a little feel for when you
16 might get the case so that you could plan for the remainder
17 of the month. That is pretty much where we are.

18 All right, ladies and gentlemen. Remember the
19 admonition not to discuss the case amongst yourselves or with
20 anyone else or allow yourselves to express any opinions on
21 the case until the case has been given to you for your
22 decision.

23 Let me say, make an extra effort to avoid any media
24 accounts of the case, of this case, or any other case
25 involving any of the types of issues that we have in this

1 case. And I've already defined for you what those subject
2 areas are, the parts of the world obviously. So do your
3 absolute best to insulate yourself from those types of --
4 those types of reports and extraneous information. Have a
5 very good evening. We'll see you tomorrow at nine o'clock.

6 (The jury left the courtroom.)

7 THE COURT: Okay. We are outside the presence of
8 jury. Counsel, would you like a break at this point or we
9 can just launch right --

10 MS. MORENO: Please.

11 THE COURT: Would anyone like a break?

12 MR. DRATEL: Sure.

13 MS. MORENO: Yes.

14 THE COURT: Ten minutes? Would you like to take
15 ten? Okay. See you in ten minutes.

16 (There was a break in the proceedings.)

17 THE COURT: Okay. Counsel, I reviewed the
18 transcripts that were mentioned jointly by all of you either
19 initially or by reference by joining, and I'm prepared to go
20 ahead and give you the rulings now. Are you ready?

21 MR. COLE: Your Honor, are we talking 106 or 801?

22 THE COURT: The 801 (d) (2) (E).

23 MR. COLE: Okay.

24 THE COURT: I don't think argument is required for
25 any of these. If anyone wishes to argue, you certainly may,

1 but as I say, I'm ready to proceed at this point. Okay?

2 Ready to go?

3 MR. COLE: Yes.

4 MR. DRATEL: Yes.

5 MS. FONTIER: Please, your Honor.

6 THE COURT: Okay. Exhibit 134 -- I guess I'll take
7 these in chronological order. Exhibit 134 is admissible
8 under 801 (d) (2) (E). Well, was 801 (sic) even the subject of
9 an objection -- I'm trying to recall now -- or was 137 the
10 first one?

11 MS. FONTIER: Your Honor, believe that was one that
12 there -- Mr. Dratel gave me the list of objections to when
13 the call was Hassan Yusuf, the first of which was Government
14 Exhibit 129. I believe he made an oral objection to
15 Government's Exhibit 134, which the person on the other end
16 of the phone is identified as Abdulkadir.

17 THE COURT: Yeah. Okay. That's why -- so the
18 person on the other end of the phone is Abdulkadir, correct?

19 MS. FONTIER: Correct, your Honor.

20 THE COURT: Okay. That's what threw me because I'm
21 looking at the script right now, and I'm seeing references to
22 Ahmed Nasir and Basaaly. Okay. That's overruled.

23 Abdulkadir appears to be attempting to dissuade
24 defendant Moalin from supporting the man firing -- firing the
25 bullets. It does not appear to be an 801 (d) (2) (E) issue,

1 but it does appear to be a statement that is admissible
2 against defendant Moalin and defendant Moalin only, so I
3 would be inclined to give the jury a limiting instruction on
4 that. Okay.

5 The next one, 135, appears to be appropriate under
6 801 (d) (2) (E). I would overrule the objection. A reasonable
7 inference that defendant Moalin is sending a thousand dollars
8 to the unidentified male's, quote, guy, end quote, in
9 addition to another amount, quote, sent to those who behead
10 the enemy, end quote, may be made, and so 135 -- any
11 objection to 135 on the basis that it's not 801 (d) (2) (E)
12 would be overruled.

13 137 I have as overruled. It's proper under 801
14 (d) (2) (E). This has already been addressed on the record.
15 Defendant Moalin is passing on Sheikalow's request for
16 support, and that is a reasonable inference that can be drawn
17 from the content, plus it also places Exhibits 138 and 139 in
18 context, and all of these three transcripts are related in
19 that way. So 137 is proper.

20 Next I have 168, Exhibit 168. I would -- I would
21 find that that is admissible under 801 (d) (2) (E). There is a
22 reasonable inference that Hassan is advising defendant Moalin
23 that Sheikalow has been targeted at the house. This is
24 relevant information conveyed to defendant Moalin on the
25 status of Sheikalow, with whom he has been allegedly

1 conspiring.

2 Next we have Exhibit 175, and I wanted to ask
3 counsel on this one -- this appears to be very cryptic. So
4 if you can turn to 175 and talk about the relevance -- well,
5 talk about -- no. Maybe, Mr. Cole, this should come from
6 you, talking about how it falls within 801 (d) (2) (E) and what
7 the relevance is.

8 MR. COLE: Yes, your Honor. Thank you. This
9 call -- just make sure I'm talking about the same one,
10 Exhibit 175. Our -- the inference that the government will
11 be arguing from this call is that this is an example of
12 Hassan, who, if you look at the body of his work, so to
13 speak, all the Hassan calls, he is the most -- he is the most
14 afraid of phone surveillance and always uses the most heavily
15 coded language in his calls. And so when he speaks of the
16 Quran disciples of Majadhub became orphans, that means Ayrow
17 -- when Ayrow died, his disciples became orphans. And they
18 go on to talk about all this heavily coded talk about the
19 donkeys fetch the brushwood and the corn, one of them broke
20 down, he's talking about a vehicle and need for more funding
21 for the fighters. And so he uses very heavily coded words
22 referring to "schools" and "ink" and "paper." And you'll see
23 this in future calls or other calls.

24 THE COURT: Well, I saw that, yeah.

25 MR. COLE: Yeah.

1 THE COURT: I've seen that in other calls, the
2 schools, the papers, the ink, the students, and all of that.
3 But this one seemed to be unrelated to others and heavily
4 coded, and I'm aware, at least on these transcripts that
5 Hassan becomes quite upset with defendant Moalin from time to
6 time, who wants to speak more directly, and Hassan, at least
7 as reflected in these, doesn't want that, he wants to speak
8 in coded terms. All right.

9 MR. COLE: Okay.

10 MR. DRATEL: Your Honor, may I just be heard on
11 that one?

12 THE COURT: Sure.

13 MR. DRATEL: Just that, you know, it's one thing to
14 say a code means something because someone has put it in
15 context, a witness who testified as to previous code that
16 somehow gives us -- this just the government's theory. It's
17 just totally theoretical. There's no basis for Mr. Cole's
18 interpretation other than Mr. Cole's interpretation. So I
19 don't see the connection.

20 THE COURT: Yeah. Well, it sounds so crazy, it has
21 to mean something other than what it means literally. You
22 know, I mean donkeys fetching brushwood? Okay, donkeys, you
23 two donkeys go over there and get brushwood, whatever that
24 is.

25 MR. DRATEL: Well, we don't know what it is.

1 THE COURT: Pardon me?

2 MR. DRATEL: That's the thing, we just have no clue
3 what it is.

4 THE COURT: Well, then it can't hurt you.

5 MR. DRATEL: So then --

6 THE COURT: I think it can be played. I think it
7 can be played. It's weird stuff, I mean, you know, and it's
8 so out of character. That's why I said -- this is the one
9 transcript I'm looking at and I'm -- you can figure out codes
10 for other stuff, you know, ultimately -- ultimately you'll
11 see in some of these transcripts they start out in codes and
12 then they go from code to noncode, and so you know what
13 they're talking about. But this is -- this is the Twilight
14 Zone, and I'll tell you, if it's the Twilight Zone, your
15 position is hey, how can it hurt me?

16 MR. DRATEL: I'll tell you how it can hurt me is
17 that he comes up with something in front of the jury in
18 rebuttal that I can't answer.

19 THE COURT: Well, if he comes up --

20 MR. DRATEL: If he comes up in rebuttal --

21 THE COURT: -- with brushwood means this and donkey
22 means that and you're arguing -- he's not going to do that.
23 He's not going to do that.

24 MR. COLE: It's argument.

25 THE COURT: Well, you can't substitute your own

1 terms.

2 MR. COLE: No. What I mean is -- what I mean is --
3 yeah, I don't -- I'm not going to provide to the jury, you
4 know, the codices to break down the language of Hassan or
5 claim that I can, but where our -- I mean just the first
6 inference, the Quran, it's like -- Majadhub has been referred
7 to many times; the jurors can draw their own inferences as to
8 what that means.

9 THE COURT: That's true, Majadhub has. Okay. So
10 in any event, I'll overrule the objection. It is part of an
11 ongoing conversation, many conversations between these two
12 participants before and after, from early on till well into
13 the chronology of events here, and so I think you know what
14 the limits would be in argument, Mr. Cole.

15 MR. COLE: Sure.

16 THE COURT: And you can't certainly substitute your
17 own -- you're not a code-cracker, and unless you have some
18 evidence in the record as to what this means, then I think
19 you need to be very careful. Okay.

20 Exhibit 177 is proper. That's basically Hassan and
21 Mr. Moalin agreeing not to talk in code. I assume that's
22 basically what that -- what that is, same subject.

23 178, it's proper 801 (d)(2)(E). This seems deeply
24 coded, but it is reasonable to infer that Mr. Moalin's
25 telling Hassan that he, Moalin, wants the money to reach,

1 quote, those who cause pain, end quote, i.e., hold the
2 slingshot.

3 When I say it's properly -- excuse me. When I'm
4 saying that's good, basically I'm finding that a reasonable
5 inference can be drawn by the jury, that we're dealing with a
6 statement made by a conspirator made to a conspirator that's
7 been adopted in the course of the conversation during and in
8 the furtherance of the conspiracy. Okay.

9 We have -- Exhibit 179 is objected to; that's the
10 next one. And this is a conversation between Hassan and Mr.
11 Doreh, defendant Doreh, and this is about, quote, ink, end
12 quote, quote books, end quote, for students, end quote. It's
13 coded but a reasonable inference can be drawn that it
14 involves providing support for alleged terrorists.

15 Exhibit 180 is proper under 801 (d) (2) (E). It's
16 admissible under that exception. And this is between
17 Mr. Hassan and defendant Moalin. It's a status update, but
18 also Hassan is becoming upset at Mr. Moalin because
19 Mr. Moalin goes into details on the phone, believing or
20 assuming that eavesdropping is going on, so that's the
21 transcript that I had earlier reference to where there's a
22 bit of a fallout on this issue of using code or not using
23 code.

24 Next is Exhibit 184. Now, that's a conversation we
25 -- the first three defendants in this case are together and

1 they're with -- on a conversation with Hassan. It's coded --
2 well, let me just leave it there rather than falling into the
3 trap of creating my own code or telling you how much I know.
4 It's just probably pretty insignificant.

5 MR. DURKIN: Judge, is that admissible against my
6 client?

7 THE COURT: Pardon me?

8 MR. DURKIN: Is that admissible against my client?

9 THE COURT: No. I mean yes, it certainly is. Any
10 statements of co-conspirators -- if you have five
11 co-conspirators and -- well, in the case here, you know,
12 three of them, alleged co-conspirators, are making a
13 statement to somebody who's another co-conspirator or even an
14 unindicted individual -- doesn't even have to be an
15 unindicted individual, another party -- it's a statement
16 that's attributable to all members of the conspiracy if it's
17 during and in furtherance of the conspiracy. So no, there's
18 no special instruction here. So we've got papers -- I won't
19 get into them -- but we have several areas in the transcript
20 that seem coded.

21 And then at page 4, interestingly, Mr. Moalin tells
22 Hassan -- let me get that. At the top there, page 4/3 at
23 3:30 to 3:34, Mr. Moalin all of a sudden says I will not say,
24 quote, students are so and so, end quote, I will talk direct,
25 you know. And then Hassan comes back: Man, I don't like

1 that. Man, talk to me like the others do.

2 So obviously that -- that's appropriate under 801
3 (d)(2)(E). This appears to be an overall conversation about
4 tactics and communication regarding material support.
5 There's even a place here in this transcript where although
6 they started out using the word "papers," 20 papers being
7 referred to in many places, at the bottom of page 4, Hassan
8 finally says: Well, you know the 20 papers are two cartons.
9 So that's -- that's 184.

10 So 185, Exhibit 185, which is between defendant
11 Moalin and defendant Doreh, it appears to be a coded message
12 regarding transfer of money, and that's properly admissible
13 under 801 (d)(2)(E).

14 Exhibit 186. Once again, this is defendant Moalin
15 with defendant Nasir, this regards money to the youth and
16 others involved in the fighting; it appears to be admissible
17 under 801 (d)(2)(E).

18 MS. FONTIER: Your Honor, sorry to interject, but I
19 don't believe that we had objected to any of the
20 conversations between the people seated at this table, it was
21 to the people outside of court that there was no evidence
22 that they might be -- or no allegation even that they were
23 co-conspirators. I think that we had --

24 THE COURT: What was the --

25 MS. FONTIER: -- the final one that we had noted

1 was Government's Exhibit 190.

2 THE COURT: I'm sorry?

3 MS. FONTIER: I believe the final exhibit that we
4 had objected to was Government's Exhibit 190, which is,
5 again, on Yusuf.

6 THE COURT: Well, one or more of you objected to
7 185, 186, 187, 188, 189, and everybody joined in everybody
8 else's objections at one point or another.

9 MS. FONTIER: Sorry, your Honor. If we may just --
10 we may just be able to --

11 THE COURT: Well, do you --

12 MS. FONTIER: We didn't mean to object or, if we
13 did and --

14 THE COURT: Okay. Well, as you were reciting
15 everything, I was writing them down. I think Mister --

16 MS. FONTIER: May have just gotten carried away,
17 your Honor.

18 THE COURT: Well, I think Mr. Ghappour -- no,
19 Mr. Ghappour --

20 MR. GHAPPOUR: Just two, your Honor.

21 THE COURT: Yeah, he had just 179 and 184, and all
22 of a sudden it was Mr. Dratel who -- you got.

23 MR. DRATEL: I read the record -- I stopped at
24 one -- well, no. I mean I had one list that Ms. Fontier
25 prepared for me.

1 THE COURT: You had 168 --

2 MR. DRATEL: But it didn't --

3 THE COURT: All right. Which ones are you
4 withdrawing? I had 184 to 190. Which ones --

5 MR. DRATEL: Oh, we had the --

6 MS. FONTIER: We had 184 and 190, which --

7 MR. DRATEL: You may have heard me say 184 through
8 190 and I didn't -- maybe you misheard because I said 184 and
9 190 were the last ones.

10 THE COURT: Okay. So 184 and 190. You know how
11 much time I spent on 185 through 189?

12 MS. FONTIER: Sorry, your Honor.

13 MS. MORENO: I find the Court enlightening in its
14 opinion of the conversations.

15 THE COURT: Well, I don't have any opinions. I'm
16 just saying what reasonable minds could infer.

17 MR. DRATEL: But, your Honor --

18 THE COURT: That's making an assumption.

19 MR. DRATEL: Also 129 was the first one, and I
20 don't think we covered that. That's another Yusuf
21 conversation, which wasn't -- that was one I objected to
22 contemporaneously before reading the list of calls later on.

23 THE COURT: Okay. And I didn't rule on that?
24 Would you remind me? I'll get back to that because I'm going
25 through my own list here, so let me finish that without

1 getting sidetracked here. So we've got --

2 MR. DRATEL: 190.

3 THE COURT: So we're going all the way to 190 then?
4 Is that the next one?

5 MR. DRATEL: Yes, your Honor.

6 THE COURT: Okay. So 190, this is between
7 Mr. Moalin and Hassan, and this is -- appears to be a report
8 on Mr. Moalin's lost of -- loss of house, et cetera. And
9 this kind -- I saw -- 189 and 190 are obviously -- they were
10 together because there were reports on big losses sustained
11 by the, quote, young boys, end quote -- that was in 189 --
12 and then 190, a separate conversation, same individuals and
13 the report on the loss of Mr. Moalin's house, et cetera. And
14 that's -- those are status reports on what's happening,
15 damage assessment reports, and those are things obviously
16 made during and in the course of an alleged conspiracy
17 dealing with losses, damages, and the like, ongoing
18 communication. So that's pretty much what I have for you on
19 the transcripts. Okay.

20 Now let's get to 129. Okay. I would find this is
21 admissible under 801 (d) (2) (E). Once again, pretty coded
22 with references to the young ones -- this is Mr. Hassan
23 making references to the young ones -- and then updated
24 reports on fighting and location of forces and armies. Yeah,
25 801 (d) (2) (E) would cover this. Okay. All right.

1 Next, let me -- I was -- as I said earlier today, I
2 was able to get to the 106 issues with respect to defendant
3 Nasir. I can cover all of these tomorrow, I can hold off on
4 these -- practically does it -- what -- and you're under no
5 obligation to tell me, obviously, but logistically how are
6 you planning to bring additional 106 material in? What would
7 you be doing? Would you have another transcript or --

8 MR. DURKIN: I thought that maybe I would --
9 assuming I could physically get it done, I thought maybe I'd
10 just use the Elmo and in cross-examination just show it to
11 him, say isn't it a fact that --

12 THE COURT: But keep in mind this though, that
13 ultimately you're going to have to get that into the proper
14 evidentiary form because in this case, the evidence is the
15 transcripts, and so the jury has to be able to review.

16 MR. DURKIN: Well, no, I understand, but I was --
17 that's an issue I guess we have to resolve.

18 MR. COLE: Well, I have a suggestion -- and of
19 course defense may have a much better idea how they want to
20 do it. We -- if they do it -- we don't have the ability to
21 run their transcripts in our system; they're not synced up,
22 and we don't have the ability. But if they want to read
23 their transcripts -- and as long as they -- subject to
24 obviously later on their linguist linking them up and laying
25 the foundation for the transcripts themselves in their case,

1 we don't have any problem even though their linguist will not
2 have -- it may be out of order somewhat with their linguist's
3 testimony. The only thing is that we would want -- I don't
4 know when this will happen, I don't know, based on Court's
5 ruling, if this will happen in our case or theirs. The only
6 requests we have, to the extent -- if any rulings are --
7 happen in our case, that there be some comment that that
8 transcript being read in our case is -- its being read now
9 for the jury's -- for whatever reason but that it's subject
10 to -- because it's a disputed transcript, it's not our
11 transcript, and it's going to be read in our case -- that's
12 all I'm trying to -- the point I'm trying to make.

13 THE COURT: Well, mechanically I don't know how you
14 do that because ultimately you're going to need to get the
15 written word to the -- in evidence. It's the written word,
16 it's written English that is the evidence in this case.

17 MR. COLE: Well, when I said read, I don't think we
18 have any objection to them admitting their transcripts into
19 evidence because they're going to call a linguist to lay that
20 foundation, and so there will be a -- my understanding is
21 there will be a written transcript for their portions that
22 they will seek to admit. I assume though that in order to
23 publish it to the jury in the first instance, they would want
24 it read to the jury and not just admitted in paper. But
25 that's I guess up to defense counsel.

1 MR. DURKIN: Well, Judge, maybe I'm mistaken, but I
2 know we have some agreement on some of our transcripts.
3 Someone else from our office was doing it, but, for example,
4 I have an email where at least two of our transcripts they
5 agreed with, so --

6 MR. COLE: Right. Yeah, there are parts that are
7 much less in dispute than others. I'm not trying -- some of
8 Mr. Durkin's transcripts are the better ones we think of some
9 of the ones we've seen. But my only point is our linguist
10 didn't testify to their transcripts, and even if we don't --
11 we may not dispute much of their transcript, but I just
12 assume at some point they're going to put their transcripts
13 in through their linguist is all I'm saying. And if they --
14 and we're fine with that coming somewhat out of order -- you
15 see that I'm saying, your Honor? If they wind up using -- if
16 Mr. Durkin uses a transcript in cross-examination in our case
17 that his own linguist hasn't admitted and laid a foundation
18 for, we understand, we're fine with that, but I still assume
19 there'll be some point where their linguist --

20 THE COURT: Who's putting in your -- who's putting
21 in your transcripts?

22 MR. COLE: They're already in. I mean we had our
23 linguist testify how they prepared verbatims, went through
24 it, so they're in. And I assume their transcripts will be
25 put in by their linguist, I assumed, and --

1 THE COURT: Laying the foundation.

2 MR. COLE: That's all I mean. And we may not --
3 I'm not suggesting that every single transcript, every
4 portion, will be subject to vigorous cross on its accuracy,
5 but --

6 THE COURT: Who's going to -- who's going to --
7 you've got to get -- you've got to get the transcript
8 material before the jury in a form that they can take it in
9 to the jury room for deliberations because that's the only
10 evidence there is. And it's going to be -- I think it's fair
11 to say there's going to be material coming in from both
12 sides.

13 MR. COLE: Yes.

14 THE COURT: And you can't expect the jury to go in
15 without -- without having heard any English -- without having
16 heard any English --

17 MR. COLE: Yes.

18 THE COURT: -- only seeing the rolling English
19 translation of Somali being spoken at a pace they couldn't
20 possibly copy.

21 MR. COLE: Agree 100 percent. I think we're all on
22 the same page on that.

23 THE COURT: Okay. Good. I know that was something
24 that was discussed earlier.

25 MR. DRATEL: And we'll reformat what we presented

1 to the Court in a manner that just had the English
2 translation on it so that it doesn't take as much space and
3 all that. It's a Word document.

4 THE COURT: What are you reformatting now?

5 MR. DRATEL: In other words, some of the stuff we
6 gave to the Court was in three columns -- or two columns, you
7 know, the Somali transliteration, and that's where they
8 provided stuff by the translator. For purposes of the jury,
9 we can dispense with the Somali and just get it as a
10 transcript if the Court prefers that. I mean I don't know --

11 THE COURT: That's fine.

12 MR. DRATEL: -- what the Court was saying. If the
13 Court was saying that you think it's better to go to the jury
14 that way, unless --

15 MR. GHAPPOUR: On behalf of Mr. Doreh, I'd like to
16 reserve the option to present this to the jury -- I'd like to
17 reserve the option to present the transcripts to the jury in
18 the same fashion that I presented it to your Honor this
19 morning, in three columns, so they can compare the government
20 version to the English version -- to the defense version with
21 the Somali in the middle. There are a lot of key words that
22 are in Somali that you can only see -- you can only see if
23 you're looking at this one transcript.

24 THE COURT: Okay. And I haven't even had a chance
25 to go over your submission yet, your 106 submission,

1 Mr. Ghappour, so --

2 MR. DURKIN: Did you --

3 THE COURT: Hold on, Mr. Durkin, just a moment.

4 All I want to make sure is that you're thinking about this.

5 It's really important for you to think about it because

6 there's going to be additional material coming in from the

7 defense. It has to come in in an appropriate written format,

8 one way or the other. I understand, Mr. Cole, it can't be

9 linked up to what you have, but it's got to come in somehow

10 out of fairness to the parties and particularly the jury here

11 so they can work --

12 MR. DURKIN: Judge, could I -- I'm confused.

13 THE COURT: Mr. Durkin --

14 MR. DURKIN: Maybe it's because I didn't directly

15 participate in the conversations. But if you'll just look

16 at, for example, our 122, the color-coded one --

17 THE COURT: Okay.

18 MR. DURKIN: -- that we gave you. I think it's --

19 it's the Government's 122. I think it would be --

20 THE COURT: It's your first one.

21 MR. DURKIN: -- our first one, A-1 I think.

22 THE COURT: Yeah.

23 MR. DURKIN: I was under the impression -- maybe

24 I'm wrong, and I'll show this to the government -- but I

25 thought the marking in red was the only disagreement that we

1 had, that the government had with that.

2 THE COURT: The marking in red?

3 MR. DURKIN: Do you see the red? It's on page 9.

4 THE COURT: Well, I saw red in that one location,
5 yeah.

6 MR. DURKIN: Right. But that's not a 106 issue.
7 That's something the government's already playing. Do you
8 understand?

9 THE COURT: I don't see any red on page 9. I see
10 blue or green at the top -- I guess it's blue.

11 MR. DURKIN: I just --

12 THE COURT: I don't see any red on page 9. It's
13 all yellow. When you say -- when you say in agreement,
14 you're in agreement, that means that's what's come in; is
15 that what you're saying?

16 MR. DURKIN: Well, yeah. The yellow -- Judge,
17 maybe I -- maybe, but if I could just -- for example -- I
18 think you can see it from here -- on this transcript I was
19 under the impression that the only disagreement in the
20 translation was over this what's in red, and that's not
21 something we would be admitting through 106. So I was under
22 the impression that -- for example, if you were going to
23 admit all of what I suggested on page 7, which is in blue,
24 that I was under the impression the government had no quarrel
25 with that translation. And I've never had this issue come up

1 in a 106 issue. I've always thought that the government
2 either had their own translation or just accepted ours and
3 took it. I don't think we should have to put a case on just
4 to put something in under 106.

5 MR. COLE: Oh, okay. I'm sorry, your Honor. I
6 guess --

7 THE COURT: While you're collecting your thought,
8 Mr. Cole, let me just say what I took away from -- yesterday
9 was it?

10 MR. DURKIN: Yes.

11 THE COURT: It was very simple. You said you were
12 going to get the material to me; yellow was what the
13 government would have introduced as a part of a particular
14 transcript, green was material that was not being played, not
15 requested by either side, and that blue was the material you
16 wanted under 106.

17 MR. DURKIN: That's correct.

18 THE COURT: As I went through your submissions,
19 that's all I was looking for.

20 MR. DURKIN: And that's all you had to do.

21 THE COURT: Well, I've done that. But I didn't
22 hear -- in your color-coding you weren't telling me anything
23 about red, although I did see red in one or two places.

24 MR. DURKIN: Yeah. The ones I gave you yesterday
25 had some red, but those are those -- that red only applies to

1 things that are in yellow where the government's using them,
2 so it's a fight we don't have to deal with.

3 THE COURT: Okay. Then I'll just ignore the red at
4 this point.

5 MR. DURKIN: Yes, there's no reason -- in fact, I
6 think the ones we sent you last night removed the red, so
7 that may be why -- if you're reading -- if you printed out
8 what we sent last night, that may be why there's no red.

9 MR. COLE: Your Honor, I think I understand what
10 Mr. Durkin's referring to -- and he'll correct if I'm wrong.
11 Okay. Your Honor, several weeks ago when we first started
12 getting into discussions with Mr. Durkin about his
13 transcripts, they would send us a transcript -- and this was
14 not talking about -- this wasn't in our mind at the time 106.
15 We said -- were looking at the translations and seeing if --
16 what the level of disagreement was within the translations.
17 We started receiving lots of transcripts from the parties,
18 and we would look for the biggest areas of dispute we could
19 find, we thought there was the most -- you know, the biggest
20 issues. But the transcripts are almost always different to
21 some extent, and we -- our linguist did not have the time or
22 ability -- I don't think there have been often in every
23 transcript major differences, but our linguist didn't have
24 the time and ability to adopt -- to go through and decide if
25 he would adopt their linguist's interpretation.

1 We tried to point out to them what we assumed were
2 the most material areas of dispute, but we are -- and
3 apologies to Mr. Durkin -- we never thought -- we thought
4 they were -- they were trying to do the same, they wanted us
5 to identify for them major areas of disagreement so they
6 could go back to their linguist.

7 But I think what Mr. Durkin's saying now is that he
8 understood -- and if so, apologies because it wasn't
9 intended -- that we would simply adopt their -- we would
10 simply adopt their translations as our own. And we never
11 meant to convey that. I think that there are less problems
12 with Mr. Durkin's translations than a lot of the others, but
13 our linguist never said oh, yeah, this is -- this is
14 something I can testify to, this is something that I've
15 agreed to.

16 I did not know or anticipate that Mr. Durkin's
17 concern would be that he didn't want to put on a case and
18 call a linguist; that was never in our mind that we were
19 going to adopt so he wouldn't have to call a linguist. That
20 was just not even in our thinking at the time.

21 MR. DURKIN: I just -- I guess it's my position
22 that I don't think 106 should require me to put on a case.
23 That's all I'm saying.

24 THE COURT: No, no, I would agree. No, I
25 understand that. No, I would agree with that. But that's a

1 practical -- once again, kind of falls into the realm of how
2 are we going to do this; this is a mechanical problem.

3 MR. DURKIN: And I think one of the -- I think
4 there's been some mutual understanding. You may recall about
5 a week ago I said I was surprised to learn that the
6 government didn't have translations for a lot of things that
7 I mistakenly presumed they did, and we got into this
8 discussion about the summaries and the verbatims and so
9 forth. Frankly, on most of 106, I was expecting, like I've
10 done in any other case I've ever tried, simply using the
11 government's translations and put it in. And this just an
12 odd situation, at least by my experience -- not that I'm the
13 most experienced in the world, but I've been doing this
14 longer than I care to admit.

15 THE COURT: But you're saying it didn't happen in
16 this case for whatever reason.

17 MR. DURKIN: Apparently not. Apparently the
18 government doesn't like -- do you not believe --

19 MR. COLE: Well, I think we'd --

20 MR. DURKIN: I mean I'd take their translations
21 even if they have them.

22 MR. COLE: Sure. If there's a 106 -- if there's
23 parts of 106 that we do have transcribed, they're more than
24 welcome to use that part. We just don't have it all
25 transcribed. These conversations often go on for very long,

1 and we didn't transcribe all of them.

2 THE COURT: Okay. Let's put substance over form --

3 MR. COLE: Okay.

4 THE COURT: -- okay -- that's one rule I think we
5 can agree on universally -- and whatever works mechanically,
6 let me know how I can assist you in working together if you
7 can't figure out some kind of a protocol to get this done. I
8 mean we're really dealing with an issue of fundamental
9 fairness right now, and both sides, as I've said repeatedly,
10 should have a fair opportunity to present their case. And I
11 know -- I know the government has no interest in unfairly
12 burdening the defense and getting before the jury evidence
13 that is deemed to be admissible -- for example, within the
14 context of this 106, once the Court rules, that's it, and for
15 better or worse. And just work together at that point --

16 MR. DURKIN: That's fine.

17 THE COURT: -- to get it done. I mean this is a --
18 this is a journey of many, many miles here and we're very,
19 very far down the road, and let's try to remove any final
20 hurdles to get this thing to the finish line.

21 MS. MORENO: Your Honor, if I may add my voice
22 because I have been working closely with the interpreter, the
23 translator, and we've had the same translator, so the
24 translator for Mr. Durkin is my translator, it's the same
25 gentleman, so we're happy to hear that his transcripts are

1 pretty good.

2 My thought was always that -- I too have had the
3 same experience as Mr. Durkin with respect to presenting 106
4 evidence. I knew though -- I realized that they did not have
5 verbatim transcripts for all the calls. So my -- what I had
6 done was turn over to the government the entire translation
7 of a particular call and ask them if they had problems with
8 any of the translations. It turns out that there's probably
9 two or three pretty material differences that I believe we
10 have, that's it, in terms of -- just in terms of a
11 translation.

12 MR. COLE: That is -- oh, I'm sorry, I'm sorry.

13 MS. MORENO: Just for my -- I'm just talking for my
14 client, there's about two or three material differences in
15 translations. With 106 issues there's about four or five
16 calls, but I was going to wait till the Court ruled, and if
17 the Court would let's say allow my 106 portion, I have the
18 whole call transcribed, and whatever the government and your
19 Honor says can be played, we can edit, we can do whatever,
20 and it would all be in English, and that would be sent to the
21 jury. I think that's what's fair. That's what would be in
22 evidence, not just their call, their portion of the call, but
23 whatever your Honor says, this part of the conversation is
24 now admitted into evidence. I believe fairly that should
25 replace the previous call that did not have that evidence.

1 Perhaps I'm wrong, but that's how I would --

2 THE COURT: You wouldn't be substituting one
3 transcript --

4 MS. MORENO: Substituting, yes, your Honor.
5 Whatever your Honor says. In other words, if you said
6 instead of the two pages that the government has in Exhibit
7 120 and I say I think three pages should be played and your
8 Honor agrees with me, then I think three pages should be
9 substituted for their two. This is how I've done it numerous
10 times in the past.

11 THE COURT: Well, that's fine if you can agree.
12 I'm assuming?

13 MS. MORENO: Well, it's your Honor's ruling,
14 whatever your Honor says in terms of what's admissible and --

15 THE COURT: Well, I understand that part.

16 MS. MORENO: Yes, yes.

17 THE COURT: But in terms of -- you know, if we're
18 dealing with a transcript -- well, there's -- let's say
19 122 -- I've got in front of me 122. Mr. Durkin's proffer,
20 I've got that in front of me. And there will be some
21 material that comes in under 106.

22 Now, I'm assuming that you can get together on the
23 material that's going to come in under 106 and create a new
24 transcript for that. One way you could do it -- Agent O'Very
25 is going to be here. I mean, you know, if the defense is

1 concerned about having no one to put --

2 MR. COLE: Sure.

3 THE COURT: -- to put this on then -- for example,
4 just dealing with 122 as an exemplar here -- you could come
5 up with a new 122, integrating the 106, have O'Very go back
6 over that, have him point out what has been added to it as
7 submitted by the defense -- he's not going to be
8 cross-examined on it, it's not the government's submission,
9 but at least that part of it is -- it's self-explanatory,
10 it's in evidence. That may be one -- that may be one way to
11 proceed.

12 MR. COLE: Your Honor, I think that that's one way
13 to proceed, but I don't think -- I think the way that it
14 would work much more likely -- and I'll explain why the way
15 your Honor just described I don't think will work -- is if we
16 had a transcript -- let's stick with just the example of 122,
17 for example -- if we have our transcript, I believe what
18 should happen is -- this is going to be a case of disputed
19 transcripts in many areas, and that's fine; the jury
20 instructions -- there's instructions for that, and the jury
21 can go back and look at both sets. And if there is a call
22 that Ms. Moreno might have that goes on for three pages and
23 ours went on for two pages and it's the same call, then they
24 should get our transcript and they should get her transcript
25 and they can decide which portion to believe or disbelieve or

1 which linguist to believe because we've been receiving
2 transcripts up till this weekend; our linguist cannot review
3 those in time. And the later we get them, I think the harder
4 the linguist has been working and been swamped because
5 they're getting worse and worse. And we have massive
6 disagreements with the transcripts coming in from Ms. Moreno.
7 And so we can't take in our case and let the jury have the
8 impression those are our translations, but they can certainly
9 have those translations.

10 THE COURT: Okay. I didn't know there were massive
11 disagreements. If there are massive disagreements, then they
12 really shouldn't come in within the context of one exhibit.
13 I thought, as you were -- I thought you said there were just
14 a few agreements and --

15 MS. MORENO: This is the first I've heard of
16 massive disagreements, your Honor. I -- I have been dealing
17 with Mr. Ward on these transcripts, and my comments were
18 specific in terms of disputes about translations, material --
19 he says the word is "operation," we say it's "work" or
20 something like that; those are very few.

21 In terms of the 106, I'm not going to say that
22 there are massive objections or disagreements. I think they
23 don't think it comes in under 106, but in terms of what the
24 transcript says, I think there are like two or three or four,
25 that's it. But I agree with Mr. Cole actually. I think both

1 transcripts should come in. I have no objection to that
2 whatsoever.

3 THE COURT: Well, then you're going to need to
4 introduce them in one form or another. I mean you have to --
5 you can't just flip them on the -- slap evidence tags on them
6 and then have them admitted; there's got to be some
7 identification of them. So have you given that some thought?

8 I agree with Mr. Durkin, I don't think you need to
9 put on a case, a separate case, just to get 106 material in.

10 MR. DRATEL: Well, I think -- and the way I've done
11 it in the past, your Honor, is that because we've stipulated
12 as to the authenticity of the recordings themselves, there's
13 no real underlying foundation problem with it. Once the
14 Court rules that something comes in under 106, then it's
15 identified as Defense Exhibit T, whatever, you know,
16 something T-1, T-2 -- we should probably use numbers under T
17 as transcripts; it's easier to remember that way. And
18 then -- we probably already have a T, but we can start with
19 T-1. But the point being is then that comes in as an exhibit
20 because there's no real foundation necessary; it's all been
21 laid because it's all part of the same disks.

22 THE COURT: Well, it may be able you're able to
23 stipulate to that and provide some kind of a statement to the
24 jury --

25 MR. DRATEL: Yes.

1 THE COURT: -- a joint statement to the jury, which
2 would be fine; that wouldn't be the defense putting on a
3 case, so to speak.

4 MR. DRATEL: Right.

5 THE COURT: Hold on just for a moment. But if
6 there are massive disagreements, for example, between the 106
7 material that I'm looking at and what the government has as
8 its transcription for the 106 material, then I don't know how
9 that affects the underlying admissibility, if at all. That's
10 the question.

11 I was going through -- and as I say -- I'll
12 repeat -- I've only gone through Mr. Durkin's submissions.
13 I'm ready to rule but maybe I shouldn't at this point because
14 we're getting so bogged down in some procedural issues -- but
15 I was assuming that these were proper -- these were accurate
16 translations.

17 MR. DRATEL: We'll have a witness who will say
18 that, so instead of putting them in provisionally pending --
19 as Mr. Cole said, pending the link-up that the linguist, our
20 linguist, will come in and say I translated these, I'm
21 qualified, and this is my translation, so we'll do that,
22 but -- with all these, but --

23 MR. COLE: Yes.

24 MR. DRATEL: -- to certain extent in terms of the
25 transcripts from the underlying nature of the calls in terms

1 of foundationally, I don't see it as fundamentally different
2 than introducing a document on cross-examination that has
3 been essentially -- you know, as an exhibit in the sense that
4 you can't you put in an exhibit in the government's case if
5 the witness -- not this witness, but we have a stipulation
6 that says that the calls are in evidence, the calls are
7 authenticated, and then --

8 MR. COLE: Your Honor.

9 MR. DRATEL: -- it's not a question of recognition
10 or all of that, it's really just a question of linking up
11 later.

12 MR. COLE: As I stated, I think that to the extent
13 a defense -- a defendant is putting on a case, I don't think
14 this is an issue because they're going to call their linguist
15 anyways for their own reasons. And what I was saying to
16 start out with is in our case, if they want to put in their
17 transcript provisionally, linking it up later, put the
18 foundation in, their linguist prepared it -- because your
19 Honor ruled it's 106.

20 The part that your Honor rules is 106 we have no
21 problem with. It sounds like the only person that's a
22 problem for is Mr. Durkin, who may not be planning to put on
23 a case. We will talk to Mr. Durkin and see what we can come
24 up with for your Honor. I think that's the only one who's
25 not putting on a case. If they're putting on a case anyways

1 and calling a linguist anyways, I think this is not a
2 problem.

3 MR. DRATEL: Yeah, we have -- we have -- just so
4 the Court understands -- we have other translation issues
5 with what's already in evidence that our linguist is going to
6 testify, so I --

7 THE COURT: That I understand.

8 MR. DRATEL: -- don't think that's going to be --

9 MR. COLE: So I'll work with Mr. Durkin -- we will
10 work -- and we will try to see if there's a solution for him,
11 because I think he's the only one who perhaps is not putting
12 on a case.

13 MR. DURKIN: And I think we can do that, Judge.

14 THE COURT: Okay.

15 MR. DURKIN: For example, I do have an email from
16 Mr. Ward; at least two of our transcripts they've okayed. So
17 I mean I think we can work this out.

18 THE COURT: Two of your 106 transcripts?

19 MR. DURKIN: Yes.

20 MR. COLE: Not as 106 but just in terms -- well,
21 Mr. Ward, why don't you address that. Sorry.

22 MR. WARD: I don't think any of the emails actually
23 address the 106 issue, your Honor, but I do think that as far
24 as, you know, depending upon what the Court's rulings are, it
25 will narrow the issues and we can probably come up with a

1 transcript that could be presented to the jury.

2 MR. DURKIN: Judge, I'm not trying to be
3 difficult --

4 THE COURT: No, no, I don't need to see emails. I
5 accept your representations, that's fine.

6 MR. DURKIN: I'm not fighting. I'm like --

7 THE COURT: Okay. I don't think you should be
8 concerned about that.

9 MR. DURKIN: That's fine. I mean --

10 THE COURT: Okay. You know, I was -- I was under
11 the impression this really needed to be rushed, these rulings
12 on these things really needed to be rushed, but as it turns
13 out, they don't need to be rushed because, you know -- Mr.
14 Dratel, did you want to say something?

15 MR. DRATEL: No, no, go ahead.

16 THE COURT: Are you agreeing or disagreeing?

17 MR. DRATEL: I'm anticipating a clarification but
18 I'm willing to --

19 THE COURT: Well, okay. So let's -- you've got
20 O'Very on the stand. I mean he's not really a substantive
21 witness; he's being used as a reader, he's linking up a few
22 things, but in terms of -- he didn't edit any of this, he
23 didn't -- he doesn't have any particularly deep specialized
24 knowledge about the case. I don't know, frankly, what his
25 role is, what his assigned role was in the case other than to

1 be doing what he's doing. I know he was present at
2 Shidaal --

3 MR. COLE: He took some pictures.

4 THE COURT: -- he took some photographs, and that's
5 it.

6 MR. DURKIN: When I was a prosecutor, Judge, we
7 used to call him a blank slate.

8 THE COURT: Okay. So, you know, he's a convenient
9 guy to be getting these exhibits through. He's not the kind
10 of guy that you would traditionally see as, you know,
11 cross-examination material on 106. He's not the officer --
12 he's not the officer who took a confession, for example, and
13 part of the confession comes in on direct and then the 106
14 part, you know, is somewhere out there, whether it's
15 admissible or not, and then all of a sudden the Court decides
16 yes, it's admissible, and then the officer who was involved
17 in obtaining the confession is cross-examined on the 106
18 material, which lays the foundation for that coming in, and
19 that's all in front of the jury. But this is a different
20 kind of 106, and you can bring this in, you can bring in the
21 106 material in, for example, through your own witnesses,
22 through a linguist; it doesn't have -- it doesn't have
23 cross-examination value.

24 MR. DRATEL: Your Honor, my only response in regard
25 to that is I would just want to use him in the same way that

1 Mr. Cole used him, as a reader, and even with the 106
2 material as a reader because I find it necessary to correct
3 the nature of what is presented as opposed to what we're
4 presenting to correct that misimpression that goes to the
5 jury about what a phone call is about, its totality, as
6 quickly as possible. So I can do that tomorrow morning on my
7 cross-examination --

8 THE COURT: Well, I know it's a timing thing for
9 you, and I know that -- I know that it may not be possible,
10 just given the -- you know, the amount of time. If I had
11 time, if I had time to go through this, I would be happy to
12 do it. I don't know that I'm going to have time to do this.
13 And as I say, all I know is I'm looking at three inches of
14 material right now. I've been through one of the
15 submissions, and --

16 MR. DRATEL: Your Honor --

17 THE COURT: -- but I'll hold off. I know -- first
18 of all, it's five o'clock now, and I know the marshals really
19 do like to, in fairness to each of these gentlemen, get them
20 back so that they can relax, have their meals, and I know
21 they probably have religious activities as well, so it's
22 probably good to bring this part of it to a halt.

23 MR. DRATEL: Just half a loaf, your Honor, for us
24 is better than none in terms of if you get to half of them
25 and give us some and use it during cross and put the rest in

1 in our case, whatever. I'm just -- you know, trying to say,
2 like I said, anything that we can use earlier is better.

3 THE COURT: Well, but you won't even have
4 transcripts prepared, will you?

5 MS. MORENO: We have -- we have --

6 MS. FONTIER: Well, your Honor, on that issue, I
7 mean there were documents-based transcripts, so they can be
8 easily -- whatever section is admissible can be easily cut
9 and paste into a separate document, but for purposes -- if we
10 have the rulings -- if it's tomorrow morning or when it might
11 be, if we read it in and then admit the written document at a
12 subsequent point, either in the afternoon or whatever, that
13 corresponds to that, to what was read on the record while
14 omitting everything that is inadmissible, I think that that
15 would be preferable for us.

16 THE COURT: Okay. How much longer do you
17 anticipate having Agent O'Very on the stand?

18 MR. COLE: We have like 20 some-odd calls. I am
19 guessing an hour, but obviously, you know, we can keep him
20 around. I think your Honor --

21 THE COURT: Let's see if we can keep him on call.

22 MR. COLE: Sure.

23 THE COURT: This is only Tuesday, so even if we
24 don't get it right away, we might have him recalled within a
25 day --

1 MR. COLE: Yeah.

2 THE COURT: -- so it's still current, some of
3 these -- some of these transcripts are still somewhat fresh
4 in the minds of the jurors. I understand what you're saying,
5 Mr. Dratel, concerning the timing thing. I don't know how
6 much more I can do between now and nine o'clock tomorrow
7 morning.

8 MR. DRATEL: No, I understand. I just think that
9 tapes is going to take -- it's like a formula -- somewhere in
10 the hours --

11 MR. COLE: Well, I don't mean your cross.

12 MR. DRATEL: No, no, I just mean your direct.

13 MR. COLE: Oh, you could be right. You could be
14 right.

15 MR. DRATEL: Two minutes a call.

16 MR. COLE: You could be right. Okay. Your Honor,
17 were you going -- so just to be clear so we can get started
18 on this tonight and make some progress tomorrow before we
19 come back to court -- I think you said you have Mr. Durkin's
20 rulings for 106?

21 THE COURT: Yeah.

22 MR. COLE: All right.

23 THE COURT: But I wasn't planning on -- you know,
24 is it really -- do you want to remove the -- you happy to
25 waive your clients' presence at this point?

1 MR. DURKIN: Sure.

2 THE COURT: I don't want to impose upon the
3 marshals. Are you all in agreement with respect to waiving
4 the presence of these gentlemen?

5 MR. DURKIN: Yes.

6 MS. FONTIER: Yes, your Honor.

7 THE COURT: All right. Okay. Counsel, I'm getting
8 a question here about overflow, the overflow courtroom.
9 Apparently there's been a request to open that up again. I
10 don't know how much lead time we need from our technical
11 people. I am informed that about a dozen people today had
12 asked for that. You know, there were empty seats in the
13 courtroom the entire time, not many but there were some empty
14 seats in the courtroom behind the bar, probably an average of
15 three or four seats.

16 I'm a little reluctant to open up another courtroom
17 and to put the tech people to the trouble of doing their
18 thing again if we're just going to be doing that for a small
19 group of people, so what I would ask each of you to the
20 extent you have outreach -- I know there's outreach into the
21 community -- just have the people cooperate in making some
22 decent rotations of spectators in and out so everyone has a
23 substantial chance to see the proceedings.

24 If we're getting -- if we're getting 20 or more --
25 if we're getting 20 or more people on an overflow basis, then

1 I'd request that that courtroom get opened up because then
2 most of the seats behind the bar are -- will be occupied.
3 But, you know, we've already done that once, and it wasn't
4 even necessary.

5 MS. MORENO: I didn't know of this new request,
6 your Honor.

7 THE COURT: Okay. Who's the community outreach --

8 MS. MORENO: Bater (phonetic) Hassan has been the
9 gentleman who's been talking to the community, and I can
10 certainly speak with him.

11 THE COURT: Okay. Let me know. If it seems
12 appropriate to reopen that, I'm informed that they can do
13 that perhaps in a half a day, just get everything -- it may
14 already be plumbed and all they have to do is flip a switch.
15 We'll find out, okay?

16 MS. MORENO: All right. Thank you.

17 (The defendants left the courtroom.)

18 THE COURT: Okay. Are we ready to proceed?

19 MR. DURKIN: Yes, Judge.

20 THE COURT: Very good. All right. We have Exhibit
21 122. The first submission I have is on page 7 of this. It
22 begins with defendant Nasir saying, what is new from our home
23 country today and yesterday.

24 MR. DURKIN: That's right.

25 THE COURT: Everybody with me?

1 MR. COLE: Yes.

2 THE COURT: And it extends all the way down through
3 page 7, through page 8, and the very first line on page 9.
4 And this is my impression; this is what the ruling would be,
5 that this is -- this is how I frame it: It's okay under 106
6 to come in. I note that the government's excerpt is not
7 misleading but the additional conversation is intertwined
8 with what has been presented and adds context --

9 MR. COLE: Okay.

10 THE COURT: -- and I think in fairness it should
11 come in. So then we have -- the next is on page 10. It
12 starts with a statement attributed to defendant Nasir: I
13 will try to get it. Wait from me. I will share with you any
14 information I receive. It extends through the rest of page
15 10, through page 11, and through page 12. I have that from
16 this point on it is not 106 material or otherwise admissible.

17 I'll just key on the other -- on the 106 from here
18 on out. So that's Exhibit 122. Okay.

19 Next, Exhibit 125, page 2, in the middle there in
20 blue starting with There are demonstrations everywhere, and
21 ending with Okay, that is great, anything else? That is
22 admissible under 106 for the same reason. I find that
23 nothing the government did here was misleading or distorting,
24 but I think that the material that comes in now is
25 intertwined with what the government has admitted and adds

1 important context, so that is in, that first excerpt.

2 Then for the next we go all the way to page --
3 well, that's it, that's it for that exhibit, 125. Okay.

4 Next, Government Exhibit 127, on top of page 2, we
5 have at the very top of page 2 Mr. Moalin asking Ahmed Nasir,
6 question mark. Down to Basaaly responding: Any crisis, just
7 wait for me a little bit. I am going to answer the other
8 line.

9 I have that admissible under 106. Once again, it
10 provides context and is intertwined with the later reference
11 to, quote, chairman, end quote, at page 3. That's all we had
12 on that transcript. Okay.

13 Next, on transcript 133, page 7, in the -- this is
14 mid-answer now -- this is part of the second bit of
15 conversation attributed to Basaaly -- or Basaaly -- starts
16 with, I forwarded it to you first. First did you -- no, I
17 forwarded it to you first. Did you get the information sent
18 to you? Down through the -- what is attributed to Basaaly:
19 It was attached. Did you see the attachment? This is not
20 106 material; this is not admissible under 106. That takes
21 care of Exhibit 133. Next, we have --

22 MR. DURKIN: Judge, just one. Last night we went
23 through --

24 THE COURT: You're withdrawing them?

25 MR. DURKIN: Yes. For 106 yes. Exhibit 183 we'll

1 withdraw. Thank you anyway.

2 THE COURT: Okay.

3 MR. DURKIN: I apologize.

4 THE COURT: So the last one is Exhibit 186?

5 MS. ROBERTS: Yes.

6 THE COURT: It starts on page 2, top of page 2,
7 beginning with hello, down through the rest of that page and
8 all of page 3, all of page 4, all of page 5, and down through
9 on page 6, quote, H Street, okay, okay, no problem, Ahmed. I
10 have this is not 106 material.

11 MR. DURKIN: I'm sorry, Judge. I'm not --

12 THE COURT: It is not, no.

13 MR. DURKIN: No, I'm sorry. Maybe I got the
14 wrong -- is this 186?

15 THE COURT: 186.

16 MR. DURKIN: So you're saying nowhere on this is
17 there a 106 --

18 THE COURT: Right. Yeah, I went through all of it.
19 It's not related to that part -- that part of the transcript
20 that the government played. And then we have 195. Do we
21 have a 195?

22 MR. DURKIN: I think we withdrew --

23 THE COURT: We don't have 195 or 196.

24 MR. DURKIN: We went through those as well.

25 THE COURT: Okay. So some are in and some aren't.

1 And then I'll get to the others as I can. And I think that's
2 it for this evening. Anything else we can address where
3 we --

4 MS. FONTIER: No, thank you, your Honor.

5 MR. DURKIN: We can do it tomorrow, but I have a --
6 maybe it's a simple, one-word answer. Have you made a
7 finding then that they have made sufficient showing to prove
8 my client's membership in this conspiracy?

9 THE COURT: I don't -- I wait until all the
10 evidence is in. I wait until all the evidence is in. If you
11 want to make a Rule 29 motion after all --

12 MR. DURKIN: No, no.

13 MS. ROBERTS: No, no, that's not --

14 MR. DURKIN: Just had something to do with the 801
15 (d) (2), but I asked you whether these were -- you said that
16 one call was only coming in against Mr. Moalin and then you
17 said the others were going to come in. I thought maybe
18 you -- and I think technically they only come in --

19 THE COURT: Yeah, there was one that -- yeah, and
20 I'll indicate that to the jury, yeah -- going back to my
21 notes here -- limiting instruction on Exhibit 134. I
22 didn't -- yes, I didn't see that that was -- that was a
23 statement that was made during and in furtherance of the
24 conspiracy, but it comes in as a -- as independent evidence
25 with respect to Mr. Moalin, okay? Okay. Well, thank you,

1 counsel. We'll see you tomorrow morning at nine o'clock.

2 We're going to continue with O'Very at that time?

3 MR. COLE: Yes.

4 THE COURT: All right.

5 MS. FONTIER: Thank you very much, your Honor.

6 THE COURT: You're very welcome.

7 (There was a break in the proceedings for the evening
8 recess.)

9 I n d e x

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Certificate of Reporter

I hereby certify that I am a duly appointed, qualified, and acting Official Court Reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the mentioned cause on the date or dates listed on the title page of the transcript; and that the format used herein complies with the rules and requirements of the United States Judicial Conference.

Dated January 16, 2013 at San Diego, California.

Debra M. Henson

/s/ Debra M. Henson (electronic)
Debra M. Henson
Official Court Reporter